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Ct. No. 3

**Calcutta High Court  
In The Circuit Bench at Jalpaiguri  
Appellate Side**

**C.R.R. 143 of 2023**

**Subir Roy Chowdhury  
Vs.  
Anupam Dutta**

***Mr. Arijit Ghosh***

***...For the Petitioner***

Copy of the service upon the learned Counsel appeared on behalf of the opposite party in the Court below is taken on record. In spite of service, opposite party is not represented.

This is an application under Section 482 of the Code of Criminal Procedure, 1973 pending before the learned Judicial Magistrate, 1<sup>st</sup> Court at Alipurduar.

It is contended on behalf of the petitioner that the petitioner is an Accountant by profession and he was appointed by the opposite party as an Accountant for the purpose of maintenance of his account and for holding Audit and other allied works and for that the opposite party herein had agreed to pay the fees to the petitioner. Thereafter the petitioner issued a cheque, being No. 422195 drawn upon State Bank of India, Falakata Branch dated 12.9.2019 for a sum of Rs. 95,600/- in favour of the petitioner as his fees to get discharge from legal liability in part.

The petitioner deposited the said cheque at his Bank on 13.9.2019 for encashment but the said cheque was dishonoured and returned with a return memo dated 26.9.2019 with endorsement "*insufficient fund*".

The petitioner accordingly issued a demand notice on 3.10.2019 asking for payment of the said amount in respect of the dishonoured cheque but the opposite party herein failed to pay the said cheque amount to the petitioner and as such the petitioner initiated a proceeding under Section 138 of the Negotiable Instrument Act, 1881 against the opposite party herein, being C.R. Case No. 1284 of 2019.

The said proceeding was taken up for consideration and the learned Court below being satisfied, issued process against the opposite party herein. The opposite party herein appeared in the said case before the learned Trial Court on 01.9.22 and prayed for bail. Since the offence is bailable, he was released on bail. The Court below was further pleased to direct the opposite party herein to deposit 20% of the Cheque amount i.e. 19,000/- only within 30 days from the date of the order.

Petitioner further alleged when opposite party was asked to deposit, as a counter-blast, the opposite party herein filed the present complaint case, being C.R. Case No. 165 of 2023 before the Additional Chief Judicial Magistrate at Alipurduar. On bare perusal of the complaint, being C.R. Case No. 165 of 2023 it is clear that the allegations made therein are false and fabricated and the said proceeding has been initiated maliciously with an ulterior motive wreaking vengeance on the petitioner herein and with a view to spite him due to private and personal grudge and as such it ought to be quashed.

The petitioner further submits that the allegations in the complaint even if accepted to be true, fails to make out any offence. The said complaint case has been lodged referring the aforesaid dishonoured cheque which is the subject matter of C.R. Case No. 1284 of 2019 by suppressing earlier transactions and the present proceeding, being C.R.

Case No. 165 of 2023 has been filed only to protect himself from C.R. Case No. 1284 of 2019 which was initiated by the present petitioner.

He further submits that the allegations leveled against the present petitioner do not attract the provisions of Section 420 or 406 of the Indian Penal Code and accordingly he has prayed for quashing of the said proceeding, being C.R. Case No. 165 of 2023.

Considered the submissions made by the petitioner. It appears that in C.R. Case No. 1284 of 2019 initiated by the present petitioner under Section 138 of the Negotiable Instruments Act, the subject matter cheque, being cheque No. 422195 amounting to Rs. 95,600/- dated 12.9.2019 is marked as 'Exhibit - 1'. In the present complaint case, the same cheque has been referred by the opposite party herein as complainant alleging that the present petitioner has cheated him by taking the said cheque from him as blank cheque and that he had taken money from the opposite party herein towards GST return but allegedly he did not file the same.

It is needless to mention that the present complaint being C.R. Case No. 165 of 2023 was filed on 22.2.2023 making certain allegation referring the same cheque, being No. 422195 dated 12.9.2019 in respect of which C.R. Case No. 1284 of 2019 initiated long back by the petitioner. Surprisingly when the present petitioner as complainant issued demand notice on 3.10.2019 through his lawyer, the opposite party herein did not give reply making any such allegation of cheating or any criminal offence in connection with the issuance of that cheque. Moreover after expiry of the notice period when the present petitioner as complainant initiated the aforesaid C.R. Case No. 1284 of 2019 long back with specific allegation that the opposite party herein as accused committed offence under Section 138 of the Negotiable Instruments

Act, the opposite party herein as accused appeared in the said proceeding and obtained bail but he had never taken any step anywhere alleging that the said cheque has been fraudulently obtained by the petitioner herein or the petitioner herein has cheated him. It is only when the Court asked him to deposit 20% of the cheque amount in the said proceeding he suddenly came out with the aforesaid allegation and most importantly in the said complaint filed in C.R. No. 165 of 2023 he has nowhere disclosed anything about previous transactions including the initiation of proceeding under Section 138 of the Negotiable Instruments Act in respect of the self-same cheque by the petitioner herein as complainant, though he was very much aware of the said proceeding much earlier.

In such view of the matter there is sufficient reason to believe that the present case initiated by the present petitioner is false, fabricated and has been maliciously instituted with an ulterior motive for wreaking vengeance on the petitioner herein and with a view to spite him due to private and personal grudge.

In the salutary judgment in *State of Haryana Vs. Bhajanlal* reported in 1992 Supp (1) SCC 335 the Supreme Court has dealt with the cases where power under Section 482 can be exercised by this court. The grounds are:-

***“102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.***

***(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.***

***(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support***

*of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

In the present context facts and circumstances clearly discloses that the allegations made in the complaint that the impugned cheque was issued by complainant was blank cheque and by that cheque petitioner herein has cheated him, long after initiation of proceedings by the petitioner herein as complainant under section 138 of the Negotiable Instruments Act, is clearly an outcome of fertile brain and which is far from reality and as such are so absurd and inherently improbable that it attracts clause (5) of paragraph 102 of *Bhajanlal's Case (supra)*.

Considering the aforesaid facts and circumstances of the case and the principles laid down by the Apex Court as quoted above I find that if the present proceeding is allowed to be continued any further it would be an abuse of process of the Court and the law and as such it is liable to be quashed.

Accordingly, the application, being C.R.R. 143 of 2023 is allowed.

The impugned proceeding, being C.R. Case No. 165 of 2023 initiated by the opposite party herein and which is presently pending before the learned Magistrate, 1<sup>st</sup> Court at Alipurduar is hereby quashed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

***(Ajoy Kumar Mukherjee, J. )***