

**05.10.2023**

Item No.6

Ct.No.2

dc./gsd.

**IN THE HIGH COURT AT CALCUTTA  
CIRCUIT BENCH AT JALPAIGURI  
CRIMINAL REVISIONAL JURISDICTION**

**C.R.R. 189 of 2023**

In the matter of : **M/s. Alpha Bioceuticals** ... Petitioner.

Mr. Nabankur Paul,  
Mr. Binod Kumar Chakravorty,  
Mr. Abhishek Sarkar ... For the Petitioner.

Mr. Arnab Sengupta,  
Mr. Deborshi Dhar,  
Mr. Rahul Agarwal,  
Ms. S. Sharma ... For the Opposite Party.

The present revisional application has been preferred for quashing of the proceedings being CR 597 of 2019 under Sections 406/420 of the Indian Penal Code pending before learned Chief Judicial Magistrate, Jalpaiguri.

The genesis of the case relates to a petition of complaint preferred by one M/s. Golcha Enterprises (hereinafter referred to as the complainant) against M/s. Alpha Bioceuticals. The allegations made in the petition of complaint were to the effect that the complainant entered into business relationship for supply of medicines with the accused firm and in lieu of furthering business transactions with the accused firm, the complainant issued a security cheque bearing Cheque No. 010485 amounting to Rs.3,00,000/- on 10.05.2018 issued by Allahabad Bank, Deshbandhupara Branch. On or about 04.08.2018, the complainant issued two blank undated cheques being Cheque Nos. 012697 and 012698 drawn on Allahabad Bank,

Deshbandhupara Branch as security cheques and enclosed a letter dated 04.08.2018. As the accused firm stopped field work, the sale of their product got affected and they had to return some of the goods of the accused firm to avoid any further loss in business. On 25.01.2019, the complainant informed the accused firm via e-mail that huge stock is lying idle due to lack of proper field work and expressed their intention to return part of those goods in lieu of which the complainant despatched a stock worth Rs.2,24,635/- to the accused firm. To the utter surprise of the complainant on having furthered a share of the stock and after having received the amount as mentioned in Clause 7, the accused firm informed the complainant through e-mail that they are declining to accept any type of return of goods and consequently by filling up the blank cheque being No. 012697 presented the same for encashment which covered an amount of Rs.3,85,000/-. On 26.06.2019, the complainant through their e-mail informed the accused firm that the said cheques bearing Nos. 012697 and 012698 were received by the accused firm on 04.08.2018 as blank and undated security cheque. However, the accused firm unethically filled the same and the same was honoured without prior intimation to the complainant. A stop payment instruction was issued in respect of Cheque No.012698 so that it is not misused any further and the complainant requested the accused firm once again to lift the idle stock lying with them.

In reply, by an e-mail the accused firm informed on 27.6.19 that the cheques were sent to the accused firm against an outstanding amount of Rs.11,33,016.

In order to create intentional harassment, the accused firm issued a demand notice under Section 138 of the N.I. Act against the complainant in respect of the cheque no. 012698, wherein the cheque was dishonoured due to insufficient funds. The said demand notice was received and thereafter a reply was also sent on or about 28.8.2019.

It has been alleged by the complainant that the accused firm intentionally cheated and/or defrauded the complainant by causing monetary loss, mental pain and agony to the complainant and, as such, is liable for the offence under Section 406 and 420 of the IPC.

It is additionally contended that the accused knowing fully well and, with fraudulent intention and ulterior motive, deceived the complainant and extorted money from the complainant.

The complainant thereafter approached before the Id. Court for issuance of process. On the basis of such complaint, the Id. CJM, Jalpaiguri, was pleased to take cognizance of the same and transferred the case to the Id. JM, 2<sup>nd</sup> court, Jalpaiguri for disposal.

The Id. JM, 2<sup>nd</sup> court, Jalpaiguri by his order dated 15.2.2023, after examination of the complainant and

thereafter on perusal of the list of documents, was pleased to issue process against the accused/petitioner.

I have considered the allegations made in the petition of complaint, more particularly, with regard to the factum of the transactions taking place between the parties as well as the initiation of the case under Section 138 of the N.I. Act being set in motion at the instance of the present accused/petitioner for dishonor of the said cheques.

In *Sunil Kumar –vs- Escorts Yamaha Motors Ltd. & Ors.* reported in (1999) 8 SCC 468, wherein, in a similar set of circumstances, FIR was lodged under Section 420/406/468 of the IPC in respect of the complainant who had initiated the proceedings under Section 138 of the N.I. Act. The Hon'ble Supreme Court was pleased to hold that the purpose of initiation of such a criminal case was to pre-empt the filing of the criminal complaint under Section 138 of the N.I. Act and, as such, the continuation of such a case under Section 420 and 406 of the IPC was bound to create hurdle and would thus result in manifest injustice. Paragraphs 4 and 5 of the said judgment are set out below:

**“4.** *Mr H.N. Salve and Mr Arun Jaitley, learned Senior Counsel appearing for different accused persons on the other hand contended that the assertions made in the FIR even taken on face value do not satisfy the ingredients of the offence alleged to have been made and on the other hand it manifestly indicates that the*

*complainant has instituted the criminal proceedings with an ulterior motive for wreaking vengeance and to pre-empt the filing of the criminal complaint against him under Section 138 of the Negotiable Instruments Act and, therefore, the High Court rightly came to the conclusion that allowing the criminal proceedings to continue would result in manifest injustice and as such quashed the FIR, and this Court, therefore, would not be justified in interfering with the same in exercise of power under Article 136 of the Constitution. According to the learned counsel, issuance of process should not be allowed to be an instrument of oppression or needless harassment. Responsibilities and duties on the magistracy lie in finding out whether the alleged accused would be legally responsible for the offence charged for. The court at that stage could be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration lest it would be an instrument in the hands of the private complaint as vendetta to harass the person needlessly. The learned counsel relied upon the decision of this Court in Punjab National Bank v. Surendra Prasad Sinha [1993 Supp (1) SCC 499 : 1993 SCC (Cri) 149] .*

**5.** *Bearing in mind the law laid down by this Court in the cases referred to earlier and the contentions raised by the learned counsel appearing for the parties and on*

*examining the allegations made in the FIR, we are persuaded to accept the submission of Mr H.N. Salve and Mr Arun Jaitley, appearing for the respondents that the necessary ingredients of the offence of cheating or criminal breach of trust have not been made out and on the other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under Section 138 of the Negotiable Instruments Act. The High Court, therefore, was well within its power in quashing the FIR as otherwise it would tantamount to an abuse of the process of court. We, therefore, see no justification for our interference with the impugned decision of the High Court in exercise of power under Article 136 of the Constitution.”*

Having regard to the findings made by the Hon’ble Apex Court in a similar set of circumstances that the initiation of the complaint case was to pre-empt the filing of the criminal complaint under Section 138 of the N.I. Act, I am of the view that the ratio laid down therein consequently applies in the facts and circumstances of the present case.

Consequently, further continuation of the proceedings is required to be interfered with.

Accordingly, all further proceedings of CR 597 of 2019 pending before the Ld. JM, 2<sup>nd</sup> Court, Jalpaiguri, is hereby quashed.

With the aforesaid observations, CRR 189 of 2023 is allowed.

Pending connected application, if any, is consequently disposed of.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Tirthankar Ghosh, J.)**