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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3210 OF 2022

Rina Tarun Dassani … Petitioner
V/s.
The State of Maharashtra … Respondent

Mr. Aditya Mehta for the petitioner.
Mr. Arfan Sait, APP for the respondent/State.
Mr R. Shirole, API, EOW, Mumbai Police, is present.

CORAM : AMIT BORKAR, J.

DATED : APRIL 25, 2023

P.C.:

1. The petition is directed against the legality and validity of the order dated 12th March 2020 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court at Esplanade, Mumbai, rejecting the discharge application filed by the petitioner for offences punishable under sections 420, 120(B) of the Indian Penal Code, 1860.

2. The prosecution case is as under:

One Himanshu Bhat issued a cheque in favour of Hirachand Pagaria of Rs.1.05 Crores, which HSBC Bank, Branch Juhu, received for clearing on 7th December 2007. The balance in the account of Himanshu Bhat on the said date was Rs.4,237/-.

Despite such knowledge of the lack of sufficient funds, the petitioner working as Teller Supervisor in HSBC Bank cleared the cheque of Rs.1.05 Crores though such a cheque could have been dishonoured by 9:30 p.m. by issuing an e-mail to the clearing department; however, she failed to take necessary steps to dishonour the cheque.

3. The investigating agency, after registration of the first information report, recorded statements of relevant witnesses, including Anil Satam, Mahesh Nalawade, and Mohammed Shaikh, collected e-mails sent and received by the petitioner and collected statements of accounts of Himanshu Bhat. After filing the charge sheet, the petitioner filed an application seeking discharge. However, by the impugned order, the learned Sessions Judge rejected the discharge application holding that despite knowledge of insufficient funds, the petitioner cleared a cheque of Rs.1.05 Crores. Therefore, the opportunity needs to be given to the prosecution to adduce evidence. The petitioner has, therefore, filed a present petition challenging the order of rejection of discharge.

4. Learned advocate for the petitioner relying on judgments in the case of **Century Spinning and Manufacturing Co. Ltd vs State of Maharashtra,** reported in (1972) 3 SCC 282, **Union of India vs Prafulla Kumar Samal** reported in (1979) 3 SCC 4 and **T. R. Arya vs. State of Punjab,** reported in (1987) CriLJ 222, submitted that the order of framing of charge affects the liberty of accused. Unless mens rea is established, the prosecution cannot be continued. He submitted that if two views are possible, one giving rise to suspicion and another of grave suspicion, the accused must be discharged. He submitted that negligence cannot take the place of dishonest intention.

5. Per contra, learned App for the State invited my attention to the petitioner's conduct of having knowledge of insufficient funds and clearing the cheque. He submitted that in such a situation, the prosecution needs to be allowed to prove the petitioner's dishonest intention. He submitted that the cheque was honoured on 7th December 2007 at 3:52 p.m.; however, despite the opportunity, no steps were taken by the petitioner to dishonour the cheque. He invited my attention to the statements of Anil Satam, Mahesh Nalawade and Mohammed Shaikh.

6. The Apex Court has delineated the parameters for the discharge of the accused in the case of **P. Vijayan vs. State of Kerala and Anr.,** reported in (2010) 2 SCC 398. The Apex Court, in paragraphs Nos.10 and 11, has held as under:

> “**10.** Before considering the merits of the claim of both parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:-
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> > "227. ***Discharge.***—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."
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> If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion,

> the Trial Judge will be empowered to discharge the accused, and at this stage, he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities, which is really the function of the court after the trial starts.
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> **11.** At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

7. To consider the submissions made on behalf of the petitioner, I have perused the statement of Mohammed Shaikh, wherein he stated that the communication made by the petitioner to instruct him to dishonour the cheque was incomplete. He stated that she should have sent a complete message to dishonour the cheque as the amount of the cheque was huge. The e-mail dated 7th December 2007 sent by Ashwini Agashe to the petitioner told her to return the cheque. The material on record indicates that the petitioner, at 11:00 a.m. on 7th December 2007, pushed the honour button in relation to the cheque in question. According to the petitioner, realizing her mistake, she sent an e-mail to the clearing department. As per the statement of Anil Satam, the responsibility of taking necessary steps about dishonour is of Teller Supervisor. He stated that if the customer is unknown, the personal relationship manager needs to be contacted to honour the cheque, and it is only after his instructions that the cheque needs to be honoured. A daily report is prepared about the number of cheques honoured and dishonoured. If the cheque is mistakenly honoured, an e-mail to that effect must be sent to the clearing department and the concerned person is contacted by telephone. Such e-mail can be sent up till 9:00 p.m., such a person in the clearing department working until 9:00 p.m. Until the clearing department replies that the cheque is dishonoured, it is the responsibility of the Teller Supervisor to pursue the matter with them.

8. The statement of Mohammed Shaikh, working in the clearing department on 7th December 2007, indicates that the petitioner called him once at 13:30 hours and communicated that the cheque had been honoured due to her mistake. He told the petitioner to communicate this fact to Mr. Mahesh Nalawade, but the petitioner failed to communicate instructions to dishonour the cheque to Mahesh Nalawade. Moreover, she did not disclose to the clearing department that the cheque was of a huge amount. His statement indicates that the message to dishonour the disputed cheque was incomplete, and if she had sent a complete message, the disputed cheque could have been dishonoured. According to him, considering the huge amount of cheque, the petitioner should have sent a complete message to dishonour the cheque.

9. On an overall consideration of the material on record, it appears that the necessary steps to pursue dishonour of such a high amount of cheque should have been taken by the petitioner immediately. However, despite knowing that the cheque for a huge amount was wrongly honoured by her, she did not take immediate steps to see to it that the cheque was honoured. She had the opportunity till 9:30 p.m. to get the cheque dishonour; however, she failed to take the necessary steps for the dishonour of the cheque. Therefore, the prosecution needs to be given the opportunity to adduce evidence on record to show the dishonest intention of the petitioner and to prove the ingredients of the offence alleged against the petitioner. At this stage, it could not be claimed that there is no sufficient ground to proceed against the petitioner, and discharge is the only remedy.

10. Further, whether the trial will end in conviction or acquittal is also immaterial. All these relevant aspects have been carefully considered by the Session Judge while dismissing the application filed by the petitioner. I, therefore, agree with the said conclusion.

11. However, it is made clear that I have not expressed anything on the merits of the claim made by both the parties and the conclusions drawn by the Trial Court, and this Court is confined only to the disposal of the discharge application filed by the petitioner. It is for the prosecution to establish its charge, and the Trial Judge is at liberty to analyze and arrive at an appropriate conclusion in accordance with the law. The Trial Judge shall decide the case uninfluenced by any observation made in the present order.

12. There could not be a dispute about the preposition of law in the judgments in the case of **Century Spinning** (supra) and **Prafulla Kumar Samar** (supra). However, in the facts of the case, the prosecution needs to be given the opportunity to produce material to prove mens rea. In the facts of the case, since it raises grave suspicion, the discharge application has rightly been rejected by the Trial Court.

13. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)