

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 384 of 2020

Bijon Kumar Paul

Versus

The State of West Bengal and Another

For the Petitioner : Mr. Jayanta Narayan Chatterjee, Adv.
Ms. Moumita Pandit, Adv.
Mr. Supreem Naskar, Adv.
Ms. Jayashree Patra, Adv.
Mr. Bhaskar Mondal, Adv.

For the Opposite Party No. 2

: Mr. Dipanjan Dutt, Adv.
Mr. Surojit Saha, Adv.
Mr. Amitava Mitra, Adv.
Ms. Antara Choudhury, Adv.

For the State : Mr. Madhusudan Sur, Adv.
Mr. Dipankar Paramanick, Adv.

Heard on : 29.01.2024

Judgment on : 04.04.2024

Ajay Kumar Gupta, J:

1. By the present revisional application, the petitioner/accused challenged the order dated 09.01.2020 passed by the learned Metropolitan Magistrate, 9th Court at Calcutta in connection with G.R. Case No. 17/2014 arising out of Park Street Police Station Case No. 05/2014 dated 2nd January, 2014 under Sections 406/420/506 of the Indian Penal Code thereby the learned Magistrate rejected the prayer for discharge of the petitioner from the said proceeding.

2. Sans unnecessary details, the facts of the instant case are as under: -

2a. In the year 2007, the petitioner entered into an agreement for hypothecation of a vehicle (ALTO/LXi) by availing loan amount of Rs. 2,86,000/- from the ICICI Bank Limited with terms and conditions that the petitioner shall re-pay in equal monthly instalments till final payments of principal and interest accrued therein. The said vehicle remained in the possession of the petitioner for his use. subsequently vide deed of assignment dated 31.12.2007, the said ICICI Bank assigned the loans/debts payable by the petitioner to the M/s Kotak Mahindra Bank Limited, opposite party no. 2 herein. The vehicle in question being registration No. WB 02 TE 3679 was fraudulently taken away by one Lakshman Das and others

from the possession of the petitioner. They did not return the vehicle even on several requests by the petitioner. Petitioner neither hiding away the vehicle nor sold to anyone. As such, the petitioner had compelled to file a criminal case under Section 156(3) of the Cr.PC, 1973 on 13.02.2009 being Misc. Case No. 169 of 2009 against one Lakshman Das and others. In pursuance of order passed by the learned Court of Additional Chief Judicial Magistrate in the said criminal proceeding, an FIR was registered by the police as Noapara Police Station Case No. 29/2009 dated 14.02.2009 under Section 420 of the IPC against Lakshman Das and others and same is still pending.

2b. During pendency of the said case, the opposite party no. 2/ M/s Kotak Mahindra Bank Limited filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner, inter alia, alleging that the petitioner had availed a loan facility for purchasing a vehicle under Loan Account being No. LACAL00004077499 as executed by and between the parties. A Cheque bearing No. 745064 dated 05.01.2010 amount to Rs. 2,89,100/- was drawn on State Bank of India, Ichapur Branch for discharging his liability but the said cheque was dishonoured. Be that as it may, the said complaint case was dismissed by the learned Metropolitan Magistrate, 16th Court at Calcutta due to non-

appearance of the complainant and finally petitioner was acquitted from the case filed under Section 138 of the N.I. Act, 1881 vide order dated 23.11.2011.

2c. It is further case of the petitioner that even after dismissal or acquittal by the learned Magistrate, the opposite party no. 2 did not prefer any appeal/revision against the said order even a lapse of more than 3 years. Rather the opposite party no. 2 lodged another false complaint against the petitioner, which was registered as Park Street Police Station Case No. 5/2014 dated 02.01.2014 under Sections 406/420/506 of the Indian Penal Code, 1860. After culmination of investigation, a charge sheet has been submitted by the Investigating Officer mechanically and perfunctory manner against the petitioner under Sections 406/420/506 of the IPC on 25th September, 2014 and thereby the learned Court below also erred in taking cognizance against the petitioner without sufficient materials. As such, the petitioner has filed an application under Section 239 of the Code of Criminal Procedure, 1973 praying for discharge from the said proceeding on certain grounds but the learned Court below rejected the prayer whimsically and capriciously without considering the case of the petitioner vide order dated 09.01.2020, which is the subject matter of challenge in this revisional application and the same has

been filed by the petitioner praying for setting aside the said impugned order.

Accordingly, the revisional application has come up before this Court for its disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Learned Advocate appearing on behalf of the Petitioner submitted that the opposite party no. 2 has filed a complaint under Section 156(3) of the CrPC, thereafter, same was registered as Park Street Police Station Case No. 5/2014 dated 02.01.2014 under Sections 406/420/506 of the IPC in pursuance of order of the learned Magistrate. Subsequently, a charge sheet has been submitted and cognizance was taken even after expiry of three years from the date of dismissal of earlier complaint filed under Section 138 of the NI Act, 1881 is absolutely an abuse of process of law and to secure the end of justice, the entire proceeding is required to be quashed and order dated 09.01.2020 is liable to be set aside otherwise the petitioner would suffer twice for a same and similar cause of action.

3a. It is further submitted that there was an agreement between the petitioner and opposite party no. 2 for payment of loan obtained under hypothecation agreement. Even for the sake of argument, if there are dues they can approach before the appropriate forum to

seek redressal for recovery of those dues amount either by filing a suit for recovery or a suit claiming damage or monetary relief. But without filing such cases in accordance with law, opposite party no. 2 has initiated a second criminal case against the present petitioner converting the case of civil disputes into criminal case for recovery purpose and to harass the petitioner. The petitioner had issued a blank cheque as a security deposit to the ICICI Bank, which was fraudulently used by the opposite party no. 2 by initiating a criminal proceeding under Section 138 of the Negotiable Instruments Act, 1881. However, the said case was finally dismissed for non-appearance of the complainant and thereby the learned Metropolitan Magistrate acquitted the present petitioner.

3b. Under such circumstances, the petitioner cannot be vexed twice for same and similar cause of action. The opposite party no. 2 initiated another criminal proceeding as they are very well-known that there is barred by limitation to institute any civil proceeding due to their own laches and fault and also trying to recover the due amount from the petitioner by way of initiating a criminal case against the present petitioner though the present petitioner is totally innocent and he has paid EMIs to the bank. The question of committing an offence under Sections 406/420/506 of IPC does not arise or attract in the case in hand. No ingredients of the said

Sections have been disclosed in the said complaint whereas a criminal case i.e. Noapara Police Station Case No. 29/2009 dated 14.02.2009 under Section 420 of the IPC is still pending against one Lakshman Das and others. The present case against the present petitioner is only a counterblast of acquittal order of a proceeding filed under Section 138 of the N.I. Act. No offence committed by the Petitioner as alleged or ingredients are also not at all fulfilled in anyway under Sections 406/420/506 of the IPC. A person cannot be double jeopardy on the same self-cause of action. Accordingly, the aforesaid proceeding is liable to be quashed and order passed therein is also liable to be set aside.

He further placed reliance of judgments to bolster his contention. Those judgments are as under: -

- i). Indian Oil Corpn. V. NEPC India Ltd. and Others¹
- ii). V.Y. Jose and Another Vs. State of Gujarat and Another²
- iii). Vesha Holdings Private Limited and Another V. State of Kerala and Others³

¹ (2006) 6 SCC 736;

² (2009) 3 SCC 78;

³ (2015) 8 SCC 293;

iv). Sushil Sethi and Another V. State of Arunachal Pradesh and Others⁴

v). J. Vedhasingha V. R.M. Govindan and Others⁵

SUBMISSION ON BEHALF OF THE STATE:

4. Per contra, learned counsel appearing on behalf of the State, produced the case diary and further strenuously submitted that the learned Court below has rightly rejected the prayer for discharge sought for by the petitioner under Section 239 of the CrPC. There is no question of double jeopardy because the proceeding under Section 138 of the Negotiable Instruments Act, 1881 is entirely different from offence punishable under Sections 406/420/506 of the Indian Penal Code. The case under the NI Act can only be initiated by filing a complaint before the 1st Class Magistrate. However, in case of offences under IPC, such condition is not necessary. It may be filed by complainant directly to the Magistrate or by police report. The ingredients of the offences are also entirely different. Therefore, question of double jeopardy does not arise at all. Even the complaint filed under Section 138 of NI Act ends with acquittal, conviction or dismissed for default that does not preclude from filing the complaint

⁴ (2020) 3 SCC 240;

⁵ (2022) SCC ONLINE SC 1010;

under Sections 406/420/506 of the IPC as the allegation is totally different. Furthermore, after investigation, sufficient materials were collected against the petitioner/accused to establish prima facie case against him. Accordingly, the learned Magistrate has rightly taken cognizance and rejected the prayer for discharge from the aforesaid proceeding. Accordingly, this criminal revisional application is liable to be dismissed.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:

5. Learned counsel appearing on behalf of the opposite party no. 2, on the other hand, submitted that it is admitted facts that the petitioner had taken a loan for the purpose of purchasing a vehicle under hypothecation agreement and both the petitioner and earlier ICICI Bank entered into a hypothecation agreement. Petitioner was ready to pay EMIs in equally instalments. In spite of such agreement, the petitioner/accused did not pay principal and interest accrued therein in terms of the agreement. He had paid a few instalments though the petitioner was entrusted the vehicle for his personal use. In discharge of his liability, he had issued a cheque to the tune of Rs. 2,89,100/- but the said cheque was placed for encashment into the bank of opposite party no. 2 but it was returned back with remark 'insufficient fund'. Accordingly, the opposite party no. 2/ M/s Kotak

Mahindra Bank has initiated a complaint under Section 138 of the NI Act, 1881 but anyhow, the complainant could not appear on the date fixed. As such, the learned Magistrate has dismissed the said case and acquitted the accused person though the dismissal on the ground of default does not acquit any accused person. At best, it would have been discharged from the offence.

5a. It is further submitted that in spite of hypothecation of the said vehicle, the petitioner has handed over the said vehicle to a third person without consultation or consent of the bank/opposite party no. 2. It amounts to commission of offence punishable under Sections 406/420 of the IPC because the petitioner, from very inception, had bad intention to cheat the Bank. Even, for the sake of argument, the proceeding under Section 138 of NI Act has been dismissed on the ground of default would not preclude the opposite party no. 2 from initiating a criminal proceeding against the petitioner since both the cases are totally different. So, question of double jeopardy or vexed twice does not arise at all. The Petitioner has handed over and siphoned away the said vehicle to a third party is totally violation of terms and conditions of the hypothecation agreement and a breach of trust upon the bank. Not only that, the petitioner also threatened the bank executive. All these facts have been disclosed in the written complaint by the bank. Petitioner had,

by selling the said vehicle or handing over to third person, apparently adopted dishonest intention on his part to defraud the bank from the very inception as well as non-payment of EMIs and/or entrustment of vehicle to third party is tantamount to commit breach of trust and, furthermore, he criminally intimidated the bank executive, thereby, the petitioner had committed offence under Sections 406/420/506 of the IPC.

5b. It is further submitted that the petitioner has, in fact, admitted of siphoning the vehicle in his supplementary affidavit dated 23.08.2023 wherein at page no. 8, paragraph no. 4 the petitioner had laid down the modest of his siphoning away of the vehicle by transfer of the said vehicle (ALTO/LXi) to one Kartick Shaw in return for a Zen without any consultation or consent of the lender Bank. Accordingly, the petitioner has misappropriated the bank's loan amount dishonestly and fraudulent intention for his wrongful gain and caused wrongful loss to the bank. The committing serious fraud upon the bank by entrusting the hypothecated vehicle to the third party is totally deprivation of the bank claim and it is a loss of exchequer of the State.

5c. It is further submitted that the prosecution under Section 138 of NI Act is no bar for initiation of a separate proceeding for the

offence committing under the IPC. In support of his contention, learned Advocate for the opposite party no. 2 placed reliance of judgments as under:

- A). **Sangeetaben Mahendrabhai Patel V. State of Gujarat**⁶
- B). **Union Territory of Ladakh and Ors. Vs. Jammu and Kashmir National Conference and Another**⁷

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Heard the rival submissions of all the parties and on perusal of the application and annexure thereto, this Court would like to highlight the admitted facts of the case at the very outset as those are desirable before deciding the case on merits.

i. Petitioner had availed a loan of Rs. 2,86,000/- for the purpose of purchasing a vehicle (ALTO/LXi) for his own use being Loan Account No. LACAL00004077499 by executing an agreement for hypothecation by and between the petitioner and ICICI Bank on 02.07.2005.

ii. Subsequently, the said loan was assigned to M/s Kotak Mahindra Bank by a deed of assignment dated 31.12.2007.

⁶ (2012) 7 SCC 621;

⁷ 2023 SCC ONLINE SC 1140

iii. The loan amount has not been paid by the petitioner in full only few EMIs have been paid.

iv. For discharging of his liabilities and debts or security, the petitioner had issued a cheque bearing No. 745064 dated 05.01.2010 amounting to Rs. 2,89,100/- drawn on State Bank of India, Ichapur Branch in favour of the opposite party no. 2.

v. The said cheque was duly presented for encashment before the complainant's bank but the said cheque was returned as dishonoured with the remark 'insufficient fund'. The said intimation was received by the opposite party no. 2 on 18.01.2010. A notice was issued for payment of the said cheque amount through the learned advocate within 15 days from the date of receipt of the said notice but in spite of receiving the said notice dated 18.01.2010, no payment was made. Accordingly, the opposite party no. 2 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the learned Magistrate.

vi. Complaint filed under Section 138 of the NI Act was ultimately dismissed for non-prosecution as non-appearance on behalf of the complainant. No steps were taken on the date fixed for filing show-cause. The accused was acquitted from the case by the learned Metropolitan Magistrate, 16th Court at Calcutta on 23.11.2011.

vii. The complainant/opposite party no. 2 did not file any revision or appeal against the said acquittal order dated 23.11.2011 passed by the learned Metropolitan Magistrate, 16th Court at Calcutta. A complaint under Section 156(3) of the Cr.PC has been filed by the Petitioner/accused against one Lakshman Das and others under Section 420 of the IPC and the said case was allowed by the learned Additional Chief Judicial Magistrate, Barrackpore and in pursuant to the order of the learned Magistrate, a Noapara Police Station Case No. 29/2009 dated 14.02.2009 under Section 420 of the IPC was registered and started against Lakshman Das and others and same is still pending.

viii. On the other hand, a complaint under Section 156(3) of the Cr.PC has been filed by the opposite party no. 2/ M/s Kotak Mahindra Bank against the petitioner/accused person under Sections 406/420/506 of the IPC before the learned Metropolitan Magistrate at Calcutta and after prima facie satisfaction, the learned Court below directed to lodge an FIR against the present petitioner and same was registered as Park Street Police Station Case No. 5/2014 dated 02.01.2014 under Sections 406/420/506 of the IPC against the petitioner and after culmination of investigation, a charge sheet no. 262/2014 dated 25th September, 2014 under Sections 406/420/506 of the IPC has been filed when prima facie case has

been established against the present petitioner. Learned Magistrate had taken cognizance against the present petitioner.

ix. The petitioner/accused person filed an application praying for discharge under Section 239 of the Cr.PC in the said case and the same was heard by the learned Metropolitan Magistrate, 9th Court at Calcutta on 09.01.2020 and after hearing both the parties, the application for discharge was rejected and fixed a date for charge on 05.02.2020. That impugned order is under challenge in this revisional application.

7. Now coming to the merits of this case, the learned counsel appearing on behalf of the petitioner raised an issue when the complaint filed under Section 138 of the NI Act has been dismissed for non-prosecution and accused has been acquitted from the said case, the opposite party no. 2 cannot initiate another case on the self-same subject matter otherwise it would be a double jeopardy to the petitioner. The accused once tried under NI Act, he cannot be implicated in another offence under IPC on similar set of allegations and the same transaction. It will be amounted to double jeopardy. He placed reliance of a judgment passed in **J. Vedhasingha V. R.M. Govindan and Others**. At the same time, the opposite party no. 2 placed reliance of another judgment passed in **Sangeetaben**

Mahendrabhai Patel V. State of Gujarat to support his contention that the plea of double jeopardy is not at all tenable in the present case. Plea of double jeopardy for quashing of the present proceeding, which was started under Sections 406/420/506 of the IPC on the ground that the petitioner/accused has been acquitted under Section 138 of the NI Act is not applicable and attracted since the ingredients of the offence under Section 138 of NI Act are entirely different from offence punishable under Sections 406/420/506 of the IPC.

After going through the judgment cited by the petitioner, it appears the Hon'ble Supreme Court referred the following issues to avoid any further confusion and to maintain consistency to a Larger Bench to answer the following questions as under, the judgement on issue of double jeopardy passed by two Judges' Bench of equal strength is conflicting:

*(1) Whether the ratio of the judgment, in the case of **G. Sagar Suri (supra)** and **Kolla Veera Raghav Rao (supra)** lay down the correct law?*

or

*The view taken in the case of **Sangeetaben Mahendrabhai Patel (supra)** as followed in **V.S.***

Reddy and Sons (supra) which is subsequent and conflicting, lay down the correct proposition of law?

(2) Whether on similar set of allegations of fact the accused can be tried for an offence under NI Act which is special enactment and also for offences under IPC unaffected by the prior conviction or acquittal and, the bar of Section 300(1) Cr.P.C. would attract for such trial?

8. In view of the above, the judgment relied by the counsels for both the parties are in conflicting with each other on the legal issue with regards to doctrine of double jeopardy and the same is pending for final decision before the larger bench of the Hon'ble Supreme Court. Until and unless the said final decision declares by the Larger Bench of the Hon'ble Supreme Court, a question arises before this Court whether earlier or subsequent judgment is applicable in the instant case? To answer this question, the opposite party no. 2 placed reliance of a judgment reported in **Union Territory of Ladakh and Ors. Vs. Jammu and Kashmir National Conference and Another.**

Hon'ble Supreme Court in **Sangeetaben Mahendrabhai Patel (supra)** has been held in Paragraph Nos. 9, 10, 11 and 12 as under:

9. The sole issue raised in this appeal is regarding the scope and application of doctrine of double jeopardy. The rule against double jeopardy provides foundation for the pleas of *autrefois acquit* and *autrefois convict*. The manifestation of this rule is to be found contained in Section 300 Cr.P.C; Section 26 of the General Clauses Act; and Section 71 I.P.C.

10. Section 300(1) Cr.P.C. reads:

“300. Person once convicted or acquitted not to be tried for same offence.”-(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.”

11. Section 26 of the General Clauses Act, 1897 reads:

“26. Provision as to offences punishable under two or more enactments. - Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but

shall not be liable to be punished twice for the same offence.”

12. Section 71 of I.P.C. reads:

“71. Limit of punishment of offence made up of several offences. - Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such of his offences, unless it be so expressly provided.”

The Hon’ble Supreme Court in **Sangeetaben Mahendrabhai Patel (supra)** has been further held in paragraph nos. 37, 38 and 39 as under:

37. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 of the N.I. Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the N.I. Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.

38. In the case under N.I. Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under the N.I. Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under the N.I. Act can only be initiated by filing a complaint. However, in a case under IPC such a condition is not necessary.

39. There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.

Hon'ble Supreme Court in **Union Territory of Ladakh and Ors. Vs. Jammu and Kashmir National Conference and Another** held in paragraph no. 35 as under:

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this

Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in ***National Insurance Company Limited V. Pranay Sethi, (2017) 16 SCC 680***. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

9. In the light of above discussion and the facts involved in the present case, Petitioner is no way prejudice by doctrine of double jeopardy or bar of Section 300 (1) of the Cr.P.C. The plea taken by the petitioner that a person, who is previously acquitted, cannot be tried for the same offence subsequently, under Section 406/420/506 of the IPC on the self-same cause of action or same set of allegations is not applicable herein.

10. In the present case in hand, the petitioner was acquitted from complaint under Section 138 of the N.I. Act by the Ld. Metropolitan Magistrate on the ground that the complainant did not appear and file show cause on the date fixed. The case was dismissed for non-prosecution and acquitted the accused/petitioner. The order of acquittal has not been challenged either by filing revision or appeal as such order of acquittal is still subsists. In an offence under Section 138 of the NI Act, requirement to prove mens rea is not necessary although for an offence under Section 420 of the IPC, fraudulent and dishonest intention i.e. mens rea is relevant to prove. In addition, the ingredients of the offence under Section 138 of NI Act are entirely different from offence under Sections 406/420/506 of the IPC. In case of proceeding started under Section 138 of the NI Act, the Court can take a legal presumption that the cheque had been issued for discharge of previous liabilities and debts and the said presumption can only be rebutted by the person who draws the cheque, whereas, on the other hand, a requirement is not there in the offence under IPC. The case under the NI Act can only be initiated by filing a complaint before the 1st Class Magistrate. However, in case of offences under IPC, such condition is not necessary. It may be filed by complaint directly to the Magistrate or by police report. Therefore, submission for quashing of the proceeding for an offence under

Section 406/420/506 of the IPC is not at all convinced by this Court on the plea of double jeopardy as well as the facts of both the cases are same and on similar cause of action.

11. Complaint made by the opposite party no. 2 is not on the self-same fact and issue. It is also not on similar set of allegations. Complaint made against the petitioner is that the complainant learnt through its Executive the accused person had removed the said vehicle purchased under hypothecation agreement to some unknown destination by transferring/alienating/selling the same is complete violation of the said agreement. Loan was granted in terms of the said agreement, the accused hypothecated and charged unto and in favour of the complainant Bank the said vehicle as and by way of first exclusive and paramount security for repayment of the said loan. The vehicle has been disposed of by the accused/Petitioner illegally and wrongfully. Petitioner cannot sell, pledge or create any charge or lien in respect of the vehicle or parted with possession thereof or to permit or suffer anything to be done, which may adversely affect or prejudice the Bank security thereon. Moreover, the petitioner has accepted the said facts in his complaint filed under Section 156(3) of the CrPC that one Lakshman Das and his companion Kartick Shaw started inducing him to handover the vehicle with the assurance that the said accused persons would be able to arrange for a new ZEN LXI for

the petitioner at the same price. He was further induced that the said accused person would pay the EMI to the financier/bank at the same rate of ALTO LXi. Thus, it is clear violation of the terms and conditions of hypothecation agreement. In addition, the Petitioner has also intimidated and threatened the bank Executive, Mr. Arnob Das, who had visited the accused person in order of collection of the outstanding dues with dire consequences. Complaint filed under Section 138 of the NI Act was for discharge of antecedent liability and debts. Whereas, subsequently complaint was relating to criminal breach of trust, cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction or a valuable security and criminal intimidation etc. as such plea, taken by the petitioner, is not at all tenable in law. In addition to the above facts, after conclusion of investigation, sufficient materials collected to establish prima facie case against the Petitioner for alleged offence. Consequently, the Ld. Court below took cognizance against the petitioner.

12. After careful perusal of F.I.R., it appears ingredients of the alleged offence are sufficient and cognizable as alleged by the complainant. Subsequently, charge sheet has also been submitted against the petitioner after conclusion of investigation under Sections 406/420/506 of I.P.C. Evidence collected during investigation also

established prima facie case against the petitioner/ accused person. Accordingly, the impugned order of rejection of discharge on 09.01.2020 passed by the learned Metropolitan Magistrate is correct, legal and there is no error in jurisdiction and law. Accordingly, revisional application has devoid of merits.

13. Accordingly, **CRR 384 of 2020** is, thus, dismissed without order as to costs. Connected applications, if any, also thus, disposed of.

14. Case Diary, if any, is to be returned to the learned Advocate for the State.

15. Let a copy of this judgment and order be sent to the learned Court below for information.

16. Interim order, if any, stands vacated.

17. Parties shall act on the server copies of this order uploaded on the website of this Court.

18. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)