

16.07.2024.
50.
Ct. No.237
Bd.

C.R.R. 2026 of 2021

Sukamal Das
-vs-
The State of West Bengal & Ors.

Ms. Devipriya Mitra
.....for the petitioner.

Mr. Ranabir Roy Chowdhury
Mr. Sandip Chakraborty ... for the State

Ms. Aiswarya Gupta
Mr. Kuntal Roy
Ms. Priyanka Saha
Ms. Maitrayee Chatterjee ... for the private respondent no.5

Liberty is given to the petitioner to correct the number of
G.R. case.

This is an application under section 482 read with
section 401 of the Code of Criminal Procedure where the
petitioner has prayed for quashing the Hare Street Police
Station Case No. 339 dated 22nd June, 2016 registered
under sections 120B/419/420 of the Indian Penal Code
being G.R. Case No. 1275 of 2016 presently pending before
the learned Chief Metropolitan Magistrate, Kolkata.

Petitioner contended that due to exchange of business
relationship, a financial transaction took place between the
petitioner and the respondent no. 5 and subsequently three
cheques issued by the petitioner herein were bounced, for
which three complaint cases were launched and disposed of
vide case no. C.N. No. 82255 of 2016, C.N. 85575 of 2016

and C.R.No. 85572 of 2019 and for which petitioner had to suffer imprisonment pursuant to order dated 31st January, 2019.

Petitioner further contended that suppressing about the said proceeding under section 138 of the Negotiable Instruments Act (in short N.I.Act), the present F.I.R. has been registered with the allegation of cheating in respect of self-same occurrence under section 420 of the Indian Penal Code. The petitioner further states that during pendency of the investigation of the present case lodged under section 420 IPC, he has made several representations before the investigating authority that the matter has already been adjudicated but the authority turned down his prayer and ultimately submitted charge-sheet against the petitioner under sections 120B/419/420 of the IPC.

Ms. Mitra, learned counsel appearing on behalf of the petitioner submits that a person cannot be prosecuted or punished twice for the same offence. Since the petitioner has already suffered imprisonment in the aforesaid complaint cases filed under section 138 of the N.I. Act, the present proceeding under section 420/419 and 120B of IPC cannot continue since such proceeding is barred under section 300 Cr.P.C. and also under Article 20(2) of the Constitution of India and therefore is liable to be quashed.

Mr. Roy Chowdhury, learned counsel appearing on behalf of the State and Ms. Gupta, learned counsel

appearing on behalf of the private respondent /opposite party no.5 submits that the settled law is that there is no bar to proceed with the present proceeding and as such the present application is a frivolous one and liable to be rejected.

It is further submitted on behalf of the State that the petitioner is a habitual offender and he has several criminal antecedents. It is further submitted that Trial of the case already commenced and after framing of charge the evidence of PW 1 is presently continuing.

The question as to whether case under section 420 IPC is maintainable when complainant has already taken action under section 138 of N.I. Act in a cheque bounce case, is no more res integra.

In **Sangeetaben Mahendrabhai Patel -vs- State of Gujrat & Anr. (AIR 2012 SC 2844)**, Supreme Court clearly held that in order to attract the provisions of Article 20(2) of the Constitution i.e., doctrine of autrefois acquit or section 300 Cr.P.C. or Section 71 of IPC or section 26 of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether two offences are the same is not identity of allegation but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offence to determine the issue. It has been specially held that plea of autrefois acquit is not proved

unless it is shown that the judgement of acquittal in the previous charge necessarily involves an acquittal of the latter charge.

Therefore two separate proceedings under section 420 and 138 are maintainable. The ingredients of two offences are different and they operate in different spheres. Mens Rea is an essential ingredient of offence under section 420 IPC, while Mens Rea need not be proved in prosecution for offence under section 138 of N.I.Act.

Having considered the facts and circumstances of the case and also considering the fact that there is no bar to proceed against the accused under section 138 of the N.I.Act, as well as under section 420 of the IPC in respect of the same transaction since the ingredients of the both offences are not same, I find no merit in the present application.

CRR 2026 of 2021, is accordingly dismissed.

Trial court is requested to expedite the final hearing of the proceeding being G.R. Case No. 1275 of 2016.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)