

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 2953 of 2023

(Assigned)

M/s. Green Orbit Apparels pvt. Ltd. & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners

:Mr. Arindam Paul, Adv.

For the State

:Mr. Bidyut Kumar Ray, Adv.

Mrs. Rita Dutta, Adv.

For the opposite party no. 2

:Mr. Ranjan Kali, Adv.

Mr. Subham Kumar Pathak, Adv.

Heard on

:25.08.2023, 27.09.2023, 05.12.2023,
14.12.2023, 08.01.2024, 09.01.2024

Judgment on

:24th January, 2024

Bibhas Ranjan De, J.

- 1.** The instant petition is filed under Section 482 of the Code of Criminal procedure (for short CrPC) to quash the proceeding in connection with Case No. CN/945/2021 for the offence punishable under Section 420/120B/34 of IPC on a written complaint submitted by the opposite party no. 2 under Section 200 of CrPC, wherein Ld. Additional Chief Metropolitan Magistrate (for short ACJM), Calcutta took cognizance of the offence by the order dated 01.10.2021.
- 2.** The fact of the case in brief is that opposite party no. 2 is a proprietorship firm having its office at 164, Mahamta Ganghi Road, P.S.-Burrabazar, Kolkata-07, doing business of 'sticker/lebel' manufacturing and supplying. Petitioner No. 1 is a Private Limited Company incorporated under the Companies Act, 1956 and petitioner no. 2 is the director of the said company having its office at 51 Canning Street, Kolkata-07, doing business in the manufacturing of garments for trading and exporting.
- 3.** It is alleged that petitioners/accused placed a purchase order to the opposite party no. 2 who supplied stickers/lebel to the

petitioners /accused to the tune of Rs. 4,50,000/- (four lakh fifty thousand). Petitioners assured to make payment within one month from the date of supply and indischarge of their legal liability also issued a cheque bearing no. 717582 dated 01.03.2012 of Rs. 4,50,000/- in favour of the opposite party no. 2 who deposited the said cheque to his banker but it got dishonoured for the reason of insufficient funds. It is alleged that in spite of demand notice petitioners did not make any payment. Subsequently, on repeated occasions petitioners/accused assured to make payment within a short period of time but failed every time and neglected to keep their commitment.

4. It is alleged that petitioners entered into a criminal conspiracy among themselves and in furtherance of their common intention, dishonestly induced the opposite party no. 2 giving false assurance that they would make payment but ultimately failed and neglected to make payment. Hence, opposite party no. 2 submitted complaint under Section 200 of CrPC before the ACMM, Calcutta for taking action. Ld. ACMM took cognizance of the offence punishable under Section 420/120B/34 of IPC by his order dated 1.10.2021.

5. The present petition is filed challenging the order of cognizance dated 01.10.2021 based on allegations made in the complaint, which is sought to be quashed on following grounds:-

- That Cognizance taken by the Ld. ACMM is bad in law and fact
- There was no new prima facie case for taking cognizance of any offence punishable under section 420/120B/34 of the IPC
- That the entire transaction is civil in nature.
- That there is nothing mentioned about initial deception in the written complaint and that is why opposite party no. 2 filed a case under Section 138 of the Negotiable Instrument Act (for short N.I. Act) which was dismissed earlier. Subsequent complaint cannot be entertained on the same.

Argument Advanced:-

6. Ld. Counsel, Mr. Arindam Paul, appearing on behalf of the petitioner has contended that the instant case revolves around the same cause of action as was made out in the case being no. C419868/2014 which was dismissed for non prosecution. According to Mr. Paul the instant case was filed after seven

years of the cause of action that too after dismissal of the case filed by the opposite party no. 2 under Section 138 of the N.I Act for dishonor of cheque. Mr. Paul has also argued that the instant complaint is barred by limitation under Section 468 of the CrPC. It is further submitted by Mr. Paul that there is scope for civil remedy.

7. In support of his contention, Mr. Paul has relied on a case of

G. Sagar Suri and another Vs. State of U.P. and others

reported in ***(2000) 2 Supreme Court Cases 636***, wherein the

Hon'ble Apex Court laid down the following principle that

invoking the jurisdiction of a criminal court for allegedly

having committed offences under Sections 406/420 of IPC by

the appellant is certainly an abuse of the process of law in

cases where the allegations are vague and omnibus. It has to

be clarified that what was the exact role of the accused and in

what manner he duped the appellant by making

misrepresentations. Mere, omnibus statement that the

accused with dishonest intention and misrepresentation

cheated the appellant is not conclusive of the matter.

8. Per contra, Ld. Counsel, Mr. Ranjan Kali, appearing on behalf

of the opposite party no. 2 has submitted that provision of

Section 468 CrPC has no application in a case of cheating under Section 420 of the IPC prescribing punishment for seven (7) years imprisonment. According to Mr. Paul that there is no impediment to file a case under Section 420 of the IPC for a cause of action identical to the offence under Section 138 of the N.I. Act for dishonor of cheque issued in discharge of liability.

9. In order to substantiate his argument, Mr. Kali, has relied on the following cases:-

- ***Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and another*** reported in ***(2012) 7 Supreme Court Cases 621***
- ***Jitendra Singh and another Vs. State of Punjab and others*** reported in ***CRM-M-19131-2022***

10. The ratio of the decision of the cases relied on behalf of the opposite party is that in the case under N.I. Act there is a legal presumption that the cheque had been drawn 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 the IPC. The case under the N.I. Act can only be initiated by filing a complaint. However, in a case under IPC there is no requirement to fulfill such a condition. There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, subsequent filing of a case is not barred by any statutory provision.

Analysis:-

11. Admittedly, there was a commercial relationship between the parties and petitioner/ M/s. Green Orbit apparels Pvt. Ltd. placed purchase order to the opposite party no. 2/ Ms. A.L. Shethi and Company for supply of sticker/labels to the tune of Rs. 4,50,000/-. It is also admitted that those labels /sticker were supplied and petitioner/company issued a cheque being no. 717582 dated 01.03.2012 for Rs. 4,50,000/- which was dishonoured and one proceeding under Section 138 of the N.I. Act was initiated by the opposite party no. 2/company. It is not disputed that the aforesaid proceeding under Section 138 of the N.I. Act was dismissed for non-prosecution on 25.11.2019.

12. However, the argument advanced on behalf of the petitioners/accused with regard to period of limitation under Section 468 of CrPC is, in my opinion, devoid of merit as I am dealing with a case relating to offence under Section 420 of the IPC prescribing punishment for imprisonment which may extend to seven years and shall also be liable to fine whereas the Provision of Section 468 of the CrPC lays down the period of limitation for the offence prescribing maximum punishment upto three (3) years.

13. On careful perusal of the contents of the application under Section 200 CrPC for drawing up a proceeding under Section 420/120B/34 of IPC, I find that all the allegations made in the proceeding under Section 138 of the N.I. Act are absolutely identical to that of the complaint case under Section 200 of CrPC. In the complaint under Section 200 CrPC complainant/opposite party no. 2 stated in paragraph 9, 10 & 11 that after dishonor of the cheque petitioners/accused were requested to pay the amount of cheque but ultimately no such payment was made and thereby petitioners/accused persons with their common intention entered into a criminal

conspiracy, by giving false assurance that they would make payment.

- 14.** In the complaint petition under Section 200 CrPC opposite party no. 2 suppressed the factual aspects of filing the proceeding under Section 138 of the N.I. Act which was dismissed for non-prosecution on 25.11.2019.
- 15.** In fact, opposite party no. 2/complainant depicted all the ingredients of offence within the meaning of Section 138 of the N.I. Act in the complaint made under Section 200 of CrPC.
- 16.** The allegations in the complaint under Section 200 of CrPC, 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 / petitioner as there was no mentioning about initial deception. There is nothing mentioned in the written complaint that there was an intention on the part of the accused/petitioners to cheat/defraud the opposite party no. 2 right from the inception. Moreover, it is apparent that the subsequent complaint under Section 200 of CrPC was lodged at a very belated stage which raises inevitable presumption that it was lodged to create a pressure of a criminal prosecution for quick

realization of the due cheque amount for which the initial proceeding under N.I. Act was instituted by the opposite party no. 2.

- 17.** With the aforesaid observation, the proceeding in connection with Case No. CN/945/2021 for the offence punishable under Section 420/120B/34 of IPC stands quashed.
- 18.** Accordingly, CRR no. 2953 of 2023 is hereby allowed.
- 19.** Interim order, if there be, any stands vacated.
- 20.** Pending applications, if there be any, stand disposed of.
- 21.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 22.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]