



2024:DHC:421



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19.01.2024

+ CRL.M.C. 429/2024

JEEVAN LAL SINGHAL

..... Petitioner

Through: Mr.Akshay Chandra, Adv.
(DHCLSC).

versus

STATE & ANR.

..... Respondents

Through: Mr.Satinder Singh Bawa, APP.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 1698/2024 (Exemption)

1. Allowed, subject to all just exception.

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2. This petition has been filed challenging the order dated 09.08.2023 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-03, Central, Tis Hazari Courts, Delhi (hereinafter referred to as the 'ASJ'), dismissing the Revision Petition filed by the petitioner herein in the Crl. Rev. No.242/2022, titled *Jeevan Lal Singhal v. State & Ors.*

3. The above Revision Petition was filed by the petitioner challenging the order dated 06.04.2022 passed by the learned Metropolitan Magistrate-09, Central District, Tis Hazari Courts, Delhi

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(in short, 'MM') in Case No. 526085/2016, titled ***Jeewan Lal Singhal v. Tikka Dutt Joshi***, dismissing the complaint filed by the petitioner herein under Section 200 of the Code of Criminal Procedure, 1973 by which the petitioner had alleged that the respondent has committed an offence under Sections 384/406/506/420 of the Indian Penal Code, 1860.

4. It is the case of the petitioner that, on 10.07.2013, the petitioner had advanced a 'friendly loan' of Rs.22 lacs to the respondent no.2 herein for a period of one year. The respondent no.2 in acknowledgement of the debt and with a promise to repay the same, executed a Pro-note and Receipt dated 10.07.2013. The said amount was to be repaid alongwith interest payable at will. After the lapse of one year, when the complainant demanded the amount back, the respondent no.2 issued a cheque dated 14.08.2014, for a sum of Rs.9,75,000/- drawn on State Bank of India, Pardhan Market, Sant Nirankari Colony, Delhi in favour of the petitioner, and assured that he would pay the balance amount of Rs.12,25,000/- after some time. The cheque on presentation was returned unpaid by the bank with remark 'funds insufficient', vide Bank Memo dated 18.08.2014. It is alleged that when the petitioner demanded the repayment of the loan, the respondent no.2 threatened him of dire consequences and to kill him with the help of hired *goondas*.

5. The petitioner examined himself and his wife in the pre-summoning evidence. The learned MM on considering the same, dismissed the complaint vide order dated 06.04.2022, observing therein that there was nothing on record to show the dishonest

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intention of the accused, that is, the respondent no.2 herein.

6. Feeling aggrieved of the said order, the petitioner challenged the same by way of the abovementioned Criminal Revision Petition. The same has been dismissed by the learned ASJ, observing as under:

“10. On examination of the complaint and pre-summoning evidence, it is evident that the precise case of the petitioner is that on 10.07.2013, he had advanced a friendly loan of Rs.22,00,000/- against pronote Ex.CW1/1 and receipt Ex.CW1/2. It is further case of the petitioner that the respondent No.2 had issued the said cheque worth Rs. 9,75,000/- in his favour which dishonoured on presentation with remark 'Funds Insufficient', vide memo dated 18.08.2014 and thereafter, he sent a demand notice dated 22.08.2014 to the respondent No.2. In the complaint, the petitioner had stated that he had instituted a complaint under Section 138 NI Act against the respondent No.2.

11. This is a case of loan transaction between two friends. The evidence on record does not disclose commission of any offence.

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13. The issue before the Court is whether there is prima facie material disclosing ingredients of offences under Section 406 and / or 420 IPC. The conditions necessary for an act to constitute an offence under Section 405 IPC is that the respondent No.2 was entrusted with some property or dominion over property. Further to constitute an offence under Section 420 IPC, there must be dishonest inducement by the respondent No.2. There is no evidence that the petitioner entrusted any property or dominion over any property to the respondent No.2. There is no evidence that the respondent No.2 dishonestly induced the petitioner to deliver any property.

14. This is a case pertaining to ordinary loan transaction between two friends. In the present case, there is no evidence that the petitioner



entrusted any property to the respondent No. 2 which he dishonestly converted to his own use, as required under Section 405 IPC.

15. Non-payment of the loan amount would not fall under mischief of Section 405 or 415 IPC in the absence of any evidence pertaining to entrustment or dishonest inducement at the inception. Except the averment that the respondent No. 2 failed to repay the loan amount, there is no evidence of dishonest inducement or misappropriation or cheating.

16. The petitioner advanced a friendly loan to the respondent No. 2 for his business. However, he could not return the loan amount. He had issued a cheque in his favour for a lesser amount. The said cheque was subject matter of proceeding under Section 138 NI Act. Mere inability of the respondent No.2 to return the loan amount cannot give rise to a criminal prosecution for cheating. Even if the complaint and the evidence, oral and documentary, are taken on their face value, no such dishonest representation or inducement could be found or inferred.

17. Criminal process is not a short cut for recovery of any amount, if due and recoverable from the respondent No.2. This is an attempt to cloak a civil dispute with a criminal nature despite the absence of ingredients necessary to constitute a criminal offence.

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20. Primarily, the dispute is civil in nature. The criminal process cannot be used for recovery of the loan amount advanced by the petitioner to the respondent No.2. There is a disquieting trend of giving criminal colour to civil disputes.

21. Summoning of an accused is a serious exercise of judicial discretion. No person can be summoned on mere asking. There must be some credible material in order to enable the Court to form a prima facie opinion regarding commission of any offence by any person.

22. This Court is of the considered opinion



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that there is no prima facie material for summoning of the respondent No.2 for offences punishable under Section 384/406/420/506 IPC.”

7. The learned counsel for the petitioner submits that while there is no challenge on the finding of the learned ASJ as far as Sections 405/406 of the IPC are concerned, the offence under Section 420 of the IPC was clearly made out. He submits that where the loan is taken by the respondent no.2 without any intention to repay the same, it would fall within the ambit and scope of Section 415 of the IPC. He also places reliance on the judgment of the Supreme Court in **Rajesh Bajaj v. State (NCT of Delhi)** (1999) 3 SCC 259 in support of his submission.

8. I have considered the submission made, however, find no merit in the same.

9. As is evident from the above, the present case is of an alleged ‘friendly loan’ transaction where the respondent no.2 has allegedly defaulted in making the repayment, the cheque issued by the respondent no.2 has been returned unpaid, which would be a matter of proceedings under Section 138 of the Negotiable Instruments Act, 1881. The dispute between the parties is civil in nature, which the petitioner is trying to give a criminal twist in order to misuse the criminal procedure. The criminal proceeding is not for shortcut for recovery of any amount. The criminal process cannot be used as a tool to settle out a civil dispute.

10. Recently, in its judgment dated 11.01.2024 passed in SLP(Crl.)

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no. 3343 of 2022, titled ***Dinesh Gupta v. The State of Uttar Pradesh & Anr.***, the Supreme Court has held that unnecessary turning of a civil matter into a criminal case not only overburdens the criminal justice system but also violates the principles of fairness and right conduct in legal matters. The misuse of criminal proceedings not only damages trust in our legal system but also sets a harmful precedent, if not addressed.

11. In ***Rajesh Bajaj*** (supra), the complaint was filed alleging that certain goods had been supplied to the accused on a promise to pay, which promise was false to the knowledge of the accused. It was further alleged that similar *modus operandi* has been adopted by the accused therein with other manufacturers as well. It is on those facts that the Court held that at least *prima facie* case against the accused had been made out and the complaint should not be dismissed. The present facts are not *pari materia* with the above. As has been noted hereinabove, the present case is based on an alleged ‘friendly loan’ taken by the respondent no.2 herein.

12. In any case, two Courts having taken a concurrent view on the complaint presented by the petitioner, this Court would not re-appreciate the evidence and act as an Appellate Court.

13. The Supreme Court in its judgment in ***Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy and Ors.*** (2011) 12 SCC 437 has held that:

“In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the



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two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.”

14. The petition is accordingly dismissed. There shall be no order as to costs.

15. It is made clear that any observation made by this Court in the present order shall not prejudice the petitioner in any other proceedings that have or may be filed by the petitioner in accordance with law.

NAVIN CHAWLA, J

JANUARY 19, 2024/Arya/am

[Click here to check corrigendum, if any](#)

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