

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 2104 of 2012

**Kotak Mahindra Prime Ltd.
Vs.
Pramod Singh**

For the Petitioner	:	Mr. Sandipan Ganguly Mr. A.K. Usmani Mr. Nazir Ahmed Mr. Tahidul Islam Ms. Ayesha Islam
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For the opposite party	:	Mr. Pawan Kumar Gupta Ms. Sofia Nesar Mr. Santanu Sett
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Heard on	:	12.02.2025
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Judgment on	:	20.02.2025
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Dr. Ajoy Kumar Mukherjee , J.:

1. This application under section 482 of the Code of Criminal Procedure has been preferred challenging impugned proceeding being Case no. CR 523 of 2011, presently pending before learned Judicial Magistrate 5th Court Serampore, Hooghly.

2. Mr. Ganguly Id. Counsel appearing on behalf of the petitioner submits that sometimes in the month of November, 2007 the opposite party herein/complainant had approached the petitioner company for the grant of personal loan for a sum of Rs. 50,000/- by entering into a personal loan cum guarantee agreement with the said company. The petitioner company accordingly sanctioned and disbursed principal loan amount of Rs, 50,000/- to the opposite party/complainant in terms of agreement dated 24th November, 2007. Under the said agreement the opposite party/complainant agreed to pay the principal loan amount along with interest in 36 monthly installments, each of Rs. 2,706/-. By virtue of the said personal loan cum guarantee agreement, the opposite party/complainant gave cheques in discharge of his liability towards repayment of the said loan.

3. It has been alleged by the petitioner that as per terms and conditions of the said agreement, the opposite party/complainant was to pay 36 monthly installments but only 7 installments were paid, out of which 2 installments through ECS and 5 installments by cash. But inspite of repeated requests the opposite party /complainant deliberately failed and neglected and refused to make payment of the monthly installments in the manner and within the time, stipulated in the said agreement and as such the petitioner company pursuant to the rights conferred under the said agreement presented the said cheques issued by opposite party/complainant in discharge of his liability for encashment and recovery of the amount.

4. However, on presentation of said cheques by the petitioner to its banker, the said cheques got dishonored on the ground of '*insufficient funds*'. Thereafter, the petitioner company issued demand notice to the opposite party/complainant for making payment of the said amount but in spite of receiving the notice, the opposite party/complainant did not pay heed to make payment within the time asked in the said demand notice.

5. As a consequence, petitioner company initiated proceeding under section 138 of the Negotiable Instrument Act (in short N.I. Act) against the opposite party/complainant herein before learned Additional Chief Metropolitan Magistrate Bangalore, which was registered as complaint case no. 37105 of 2008, wherein learned Magistrate Bangalore, was pleased to issue process against the opposite party/complainant and on his failure to appear before the learned Magistrate, a warrant of arrest (in short W/A) was issued against opposite party herein and on the strength of W/A the opposite party/complainant was arrested and thereafter released on bail.

6. Mr. Gangully further submits that challenging the said proceeding being no. 37105 of 2008, the complainant/opposite party herein preferred an Application before the Hon'ble High Court, Karnataka at Bangalore vide Criminal Petition no. 5489 of 2011 and the High Court by an order dated 1st February, 2012 was pleased to dispose of the same with the direction upon Additional Chief Metropolitan Magistrate Bangalore, to return the complaint as per provision of section 201 (a) of the Cr.P.C. for presenting the same before appropriate forum.

7. In the present complaint lodged under section 500 of IPC, the complainant/opposite party herein has made the petitioner company an

accused alleging that the opposite party/complainant was forced to deposit 10 blank cheques and the company has blackmailed the opposite party by presenting the said cheques one after another by putting an amount as per their desire and without taking prior consent or confirmation of the complainant. It is further alleged in the complaint of the instant preceding that knowing fully the fate of the cheques, the accused company has presented those cheques in order to harass the complainant and thereby the company has committed crimes one after another by showing the alleged dishonoured cheques. The complainant in his complaint also laid special emphasis stating that the complaint was lodged before the Magistrate at Bangalore only to harass the complainant, knowing fully well that learned Magistrate Bangalore had no jurisdiction to deal with the case. Further allegation levelled in the complaint is that the accused company caused to issue warrant of arrest against the complainant showing the case under section 138 of N.I. Act and on that basis the complainant was arrested by Uttara P.S. on 01.04.2010. It is further alleged that due to gross illegality on the part of the accused company, the complainant had to suffer financial loss and harassment as well as unbearable sufferings and mental agony and being a business man, coming from a reputable family, the prestige, honour, dignity and reputation of the complainant has been lowered down to a large extent and for which he prayed before the court for issuance of process for committing offence under 500 IPC, inviting the petitioners to face the trial.

8. It further appears that the complainant, in his initial deposition tendered before the Magistrate under section 200 Cr.P.C. stated that after

releasing on bail he had discovered that the concerned Magistrate at Bangalore, had not issued any warrant of arrest against him and he has been falsely arrested for which he has suffered a lot and defamed in the eye of the society and the reputation of his family has been affected. One of his family member, who is complainant's elder brother has also made statement before the Magistrate under section 200 Cr.P.C, who has also stated that the reputation of his brother/complainant and other family members has been badly affected and injured because of the said arrest and not only that his brother's business has also been affected due to such incident.

9. The opposite party/complainant also filed supplementary affidavit in the present proceeding, where his main contention is that, of late it has come to the knowledge of the court that the financial institutions through its advocate in collusion with court staff have been issuing fake "*judges order*" and "*fake warrant of arrest*" to person of different cities and states and harassing and forcing them to pay. In the said affidavit in opposition he stated that the complainant paid EMIs regularly on the due date till August, 2008 but due to certain loss of the business, he could not clear the next EMIs and for which the complainant approached the accused person with a proposal to make full and final settlement of the loan amount, which was accepted by the accused herein by its letter dated 18.08.2008. His further contention in the affidavit in opposition is that despite payment of full and final settlement amount, the petitioner without informing and/or taking consent from the opposite party, has fraudulently deposited the impugned cheque by putting the entire loan amount of Rs. 50,000/-, in

violation of terms of the agreement. It is also alleged that the accused cunningly initiated the proceeding at Bangalore which lacked jurisdiction and the same was filed before the Bangalore court only on the basis of demand notice with an evil motive that Bangalore court situates far away from West Bengal and in that event the opposite party would fail to attend the court and the warrant of arrest would be issued, so that the opposite party get humiliated in front of the society during arrest.

10. Along with the said affidavit in opposition, the opposite party also annexed certain documents wherefrom it appears that the accused company had given a letter to the complainant on 18th August, 2008, informing that they agreed to settle the loan at an amount of Rs. 41,000/- against the principal amount of Rs. 47,145/- and it was further settled that the settled restructured arrear loan amount will be paid by demand draft or cash on 18.08.2008 to the tune of Rs. 10,000/- and Rs. 19,000/- on 20.09.2008 and that they have already received Rs.11,000/- from the complainant herein in the month of July, 2008. The complainant/opposite party also annexed Xerox copy of receipt of payment of said Rs.11,000/- and also filed a receipt of Rs. 3,000/- dated 18.08.2008. The other money receipt annexed with the affidavit does not bear signature of the accused company. There is also nothing to show that in terms of settlement dated 18th August, 2008, the complainant/opposite party had paid Rs. 10,000/- on 18.08.2008 and 19,000/- on 20.09.2008.

11. On the contrary while complainant adduced initial deposition before the court below, he stated that he paid back the 50% amount, of the total loan amount taken by him from the accused though he has stated that he

had not received any settlement letter from the bank. He also stated in his initial deposition that he is willing to pay back the remaining loan amount, subject to return of blank cheques by the accused.

12. The relevant portion of the initial deposition may be reproduced below:-

"I therefore, gave letter to the Kotak mahidnra bank and informed them (i.e.) Kotak Mahindra that I am willing to return back the loan amount and requested them to return me back the blanks cheques, which were given to them by me as security deposit against the loan amount. Such after the said letter given by me to Kotak M.P, the Kotak Mahindra deposited the cheque which was issued to them by me and intentionally dishonoured them, for which I already stopped the payment at his bank. Thereafter I was arrested by a W/A issued by the ld. M.M. court, Bangalore. C/W C.C. /29490/09. I was arrested on 1/4/2000 from my house at Uttarpura after which I was released on 1/4/2000 from the executive Magistrate, and appeared before the Metropolitan Court, Bangalore, where I found that no W/A was issued against me from the Metropolitan Court. Since, I was falsely arrested, I have suffered a lot and defamed in the eye of the society and also my reputation and the reputation of my family has been affected."

13. The upshot of the aforesaid submissions made by the parties is that complainant/opposite party took loan of Rs. 50,000/- from the accused company on execution of loan agreement dated 24th September, 2007 and as per said agreement he had to liquidate the said amount by 36 monthly installments of Rs. 2,706/- each and thereafter he defaulted in payment of monthly installments and then he approached before the accused/company for full and final settlement of the loan amount where the loan amount was restructured at an amount of Rs. 41,000/- out of which 11,000/- has already been paid by the complainant herein and he was further agreed to pay Rs.10,000/- on 18.08.2008 and Rs.19,000/- on 20.09.2008. There is nothing in the record to show that the complainant/accused has made the payment in terms of aforesaid settlement. On the contrary his initial deposition states that he has not paid more than 50% of the loan amount and for the payment of rest

amount he asked the accused company to return the cheques and in default he made stop payment order to his banker. Thereafter, the accused company initiated proceeding under section 138 of the N.I. Act, alleging dishnour of cheque before Bangalore court and during pendency of the said proceeding before Bangalore court, when the said proceeding was challenged before Bangalore High Court, the High Court directed the Magistrate to return the said complaint to the complainant for presentation before the jurisdictional Magistrate but before that accused/opposite party/complainant herein was arrested and thereafter was released on bail.

14. Section 499 of the IPC deals with the definition of defamation along with exception clauses and the eighth exception clause provides that it is not defamation to prefer in good faith an accusation against a person to anyone in lawful authority over that person with respect to the subject matter of the accusation. Accordingly to obtain the protection given by the eighth exception under section 499 IPC, two conditions must be fulfilled.

(a) The accusation must be made to a person in authority over the party/accused

(b) The accusation must be preferred in good faith

15. In the present context it is not in dispute that a proceeding under section 138 of the N.I. Act lies before a Magistrate and not before any other authority. Now which magistrate can have the territorial jurisdiction may be a disputed question of fact and law but if it is filed before an inappropriate forum, the remedy lies under section 201Cr.P.C for return of the complaint for presentation before the appropriate forum, but by no stretch of imagination, it can be said that if such complaint is filed

knowingly or unknowingly before a Magistrate who does not have territorial jurisdiction to decide the same, such initiation of proceeding before a wrong forum can attract the offence punishable under section 500 of IPC.

16. The next most important question in this context is to consider whether the accusation/complaint was made by the present petitioner/accused under section 138 of the N.I. Act in “*good faith*” or not because in view of eighth exception to section 500 IPC, it is not defamation to prefer in good faith an accusation against any person to any lawful authority.

17. Though section 3(22) of General Clauses Act 1897, defines “*good faith*” stating that a thing shall be deemed to be done in good faith where it is infact done honestly, whether it is done negligently or not. But the expression “*good faith*” under IPC has a definite connotation which is different from saying that the person concerned has honestly believed the truth of what is said. In fact section 52 of IPC starts in the negative tone excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition ‘*nothing is said to be done or believed in good faith*’ is that the solitary item included within the purview of the expression “*good faith*” is what is done with “*due care and attention*”. Due care denotes the decree of reasonableness in the care, sought to be exercised. In short before a person proposed to make an imputation on another, the complainant must first make an enquiry into the factum of imputation which he proposes to make.

18. In the present context as I have already stated above that admittedly the complainant had taken the loan and handed over certain cheques to

the petitioner company and that there is nothing to show that the entire loan amount or even the settled amount was paid to the accused/company. So it cannot be said that before lodging complaint, petitioner herein has not taken due care or before making imputation he did not make any enquiry about the factum of allegation, leveled in the complaint.

19. In fact the petitioners who are relying on eighth exception to section 499 of IPC need not establish the truth of his allegation. All that he needs to do is to take care that there are reasonable grounds for believing in the imputation made in the complaint and that he acted on the *bonafide* belief that the imputations are true. It is sufficient if he proves that on reasonable ground he believed the allegation to be true and from that belief he made the accusation to the lawful authority, which in fact is apparent in the facts and circumstances in the present case and as such does not constitute offence under section 500 IPC.

20. From the order of the Magistrate dated 10.08.2011, it appears that he issued process under section 204 of Cr.P.C. mechanically as his order does not reflect that he applied his mind to the facts of the case and the law applicable thereto. Infact before issuing process the Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegation made in the complaint, supported by the satisfactory evidence and other materials on record. In the present context, the order of the Magistrate summoning the accused reflects that he has not at all applied his mind to the facts of the case and issued the process mechanically and as such on the basis of overall discussion, the impugned proceeding is liable to be quashed.

21. CRR 2104 of 2012 stands allowed. The impugned criminal proceeding being Case no. CR 523 of 2011 under section 500 of IPC pending before learned Judicial Magistrate, 5th Court, Serampore, Hooghly thus stands quashed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)