

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3209 of 2023

(Assigned)

Kavita Sharma

-Vs-

IDFC First Bank Ltd.

For the Petitioner : Mr. Dulal Dey

For the Opposite Party : Mr. Debangana Bhattacharjee

Heard on : 16.08.2024, 04.12.2024

Judgment on : 15.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner had filed the instant revisional application seeking quashing of Complaint Case No. 48665 of 2022 under Sections 138 and 141 of the Negotiable Instruments Act, 1881, along with the orders dated 04.06.2022 and 02.07.2022 passed by the Learned 12th Metropolitan Magistrate, Calcutta. The petitioner had contended that the complaint had been mechanically entertained without proper application of judicial mind and in violation of mandatory procedural safeguards. It had been the case of the opposite party that a loan had initially been taken from M/s. Capital First

Ltd., which had been merged with M/s. IDFC Bank Ltd. pursuant to an order of the NCLT, Mumbai in 2018, and the name of the said bank had thereafter been changed to IDFC First Bank Ltd. It had further been alleged that on 24.01.2020, the petitioner had approached the opposite party seeking financial assistance of Rs. 38,90,000/- and had issued a cheque for Rs. 1,87,938/- bearing Cheque No. 941365 dated 30.03.2022, drawn on Canara Bank, purportedly towards repayment of the outstanding dues. The said cheque, on presentation to HDFC Bank Ltd., Park Street Branch, had allegedly been dishonoured with the remark "Insufficient Funds" as per return memo dated 11.04.2022.

2. The opposite party had claimed to have sent a demand notice dated 11.05.2022 through its advocates by registered post with acknowledgment due to the petitioner, calling upon her to pay the cheque amount within the statutory period of 15 days. It had been further alleged that although neither the acknowledgment card nor the envelope had been returned, the postal tracking report had shown the notice to have been delivered, which the opposite party had relied upon to claim due service of notice. Based on such presumption, the opposite party had filed a complaint before the Learned Chief Metropolitan Magistrate, Calcutta, against four accused persons, including the petitioner, which had been registered as Complaint Case No. 48665 of 2022.
3. The petitioner had contended that she had been arraigned as accused no. 3 without any legal basis, as the cheque in question had neither been issued nor signed by her. She had specifically averred that the cheque had been

signed by Suresh Kumar Sharma, who had operated under the name and style of Rajshree Pictures, and that the petitioner had never been an authorised signatory to the account from which the cheque had been drawn. Furthermore, she had stated that the loan account in question had been generated solely in the name of Suresh Kumar Sharma, and no document had been produced to show her connection to the transaction, her role in the business of Rajshree Pictures, or any liability undertaken by her. Despite this, the Learned Magistrate had, according to the petitioner, mechanically passed the order dated 02.07.2022 issuing process against her, without properly examining the complaint, supporting documents, or the requirement of mandatory inquiry under Section 202 CrPC, which had been applicable since the petitioner resided outside the territorial jurisdiction of the Court.

4. The petitioner had placed reliance on the judgment of the Hon'ble Supreme Court in *Birla Corporation Ltd. v. Adventz Investments & Holding Ltd.*, (2019) 16 SCC 610, wherein it had been held that the issuance of process must not be mechanical and that failure to apply judicial mind to the materials on record, particularly in cases involving accused persons residing beyond territorial jurisdiction, would render the process legally untenable. Further, the petitioner had invoked the directions issued by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Criminal) No. 2 of 2020, In Re: Expeditious Trial of Cases under Section 138 of the N.I. Act*, which had reiterated the mandatory nature of an inquiry under Section 202 CrPC before issuance of process where the accused resided beyond jurisdiction.

5. She had asserted that the Magistrate had failed to conduct any such inquiry and had merely recorded that the Court had perused the materials on record and found a prima facie case, despite there being no specific allegations in the complaint that the petitioner had been in charge of, or responsible for, the conduct of the business of Rajshree Pictures. Lastly, the petitioner had also contended that no valid service of the demand notice had been effected upon her, which was a mandatory pre-condition under Section 138 of the N.I. Act, and that reliance solely on the postal tracking report could not substitute actual proof of service, especially in the absence of any returned acknowledgment card or envelope.
6. The learned advocate representing the petitioner had submitted that the dishonoured cheque in question had been issued solely by accused no.1, Suresh Kumar Sharma, proprietor of Rajshree Pictures, and had not borne the petitioner's signature, as she had neither been an authorised signatory nor connected to the account from which the cheque had been drawn. It had not been alleged in the complaint that the petitioner had been responsible for the conduct of the firm's business, and the learned Magistrate had issued summons mechanically without conducting the mandatory enquiry under Section 202 of the CrPC, despite the petitioner residing outside the territorial jurisdiction of the court. The Supreme Court, in *In Re: Expeditious Trial of Cases under Section 138 of the N.I. Act*, had directed such an enquiry to be mandatory in similar circumstances. Furthermore, the issuance of process had been mechanical and without application of mind, violating the ratio laid down in *Birla Corporation Ltd. vs. Adventz Investments & Holding Ltd.* (2019)

16 SCC 610. The petitioner had never been served with the statutory demand notice as required under the N.I. Act, and the opposite party had presumed service based on a postal track report, which could not be treated as conclusive proof. It had been contended that the petitioner's inclusion in the proceedings was solely based on her role as a co-applicant in the loan agreement, which had not translated into criminal liability under Section 138, especially since the cheque had not been issued from her account or signed by her. The petitioner had further submitted that she had not been associated with the firm Rajshree Pictures, nor had she held any joint account with the drawer. In support of her case, she had relied on the decision in *Shalu Arora vs. Tanu Bathla*, decided by the Punjab and Haryana High Court on 30.11.2023, where it had been held that a spouse could not be prosecuted merely due to marital ties with the drawer of a cheque. Hence, in the absence of foundational allegations and statutory compliance, the petitioner had prayed for quashing of the complaint case.

7. The learned advocate representing the opposite party had contended that the Hon'ble High Court ought not to exercise its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash a nascent prosecution, especially when the complaint petition and the accompanying documents had prima facie reflected the petitioner's involvement in the offence punishable under Sections 138 and 141 of the Negotiable Instruments Act. The statutory presumption under Section 139 of the said Act had cast the burden upon the accused to prove that the cheque in question had not been issued in discharge of a legally enforceable debt or

liability, and such rebuttal could only have been effected during trial by cross-examination or by adducing defence evidence. The petitioner had relied on documents in her defence which had neither been tested in evidence nor been of unimpeachable character or sterling quality and, therefore, could not have been considered at the pre-trial stage. It had further been argued that the facts presented by the petitioner in her application had amounted to defences that ought to have been urged during the trial and not in a proceeding seeking quashing. The respondent had asserted that the absence of explicit averments regarding the nature of the legal liability in the complaint was inconsequential, given the statutory presumption under Section 139. Moreover, the loan agreement had been annexed to the record to support the prosecution's case, and the assertion that the petitioner had not been connected with the dishonoured cheque had been a factual defence to be adjudicated during the evidentiary phase of trial. The documents relied on by the petitioner had neither met the threshold of unimpeachability nor demonstrated any manifest miscarriage of justice, and therefore the Revisional Application had been asserted to be devoid of merit, premature, and liable to be dismissed.

8. In the present revisional application, the petitioner had sought quashing of Complaint Case No. 48665 of 2022 under Sections 138 and 141 of the Negotiable Instruments Act, along with the orders passed by the Learned 12th Metropolitan Magistrate, Calcutta. The petitioner had contended that the summoning order had been passed mechanically without due consideration of the materials on record and in contravention of the

mandatory procedure prescribed under Section 202 CrPC, particularly since she resided beyond the territorial jurisdiction of the Learned Magistrate. It had further been urged that she had not issued or signed the dishonoured cheque and had neither been an authorised signatory nor involved in the conduct of business of the firm in question. Her inclusion as an accused had been based merely on her status as co-applicant in the loan agreement, which by itself had not attracted criminal liability under the Act. It had also been submitted that no valid service of demand notice had been effected upon her in accordance with Section 138 of the Act.

9. The opposite party, however, had contended that the complaint, supported by documents, had disclosed prima facie material against the petitioner and that the statutory presumption under Section 139 had cast a legal burden upon the accused to rebut the presumption at trial. The documents produced in defence by the petitioner had neither been unimpeachable nor conclusive in nature, and the grounds raised had amounted to disputed questions of fact which could only be adjudicated upon during trial. This Court is therefore of the view that the petitioner's contentions relate to her defence on merits and cannot be adjudicated at this nascent stage by invoking the jurisdiction under Section 482 CrPC. The process had been issued on the basis of the complaint and supporting materials, and there exists no compelling ground to interfere at this stage. Accordingly, the application stands dismissed.

10. Section 202 of the Code of Criminal Procedure, 1973 states as follows:-

“202. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1 [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”

11. In **National Bank of Oman v. Barakara Abdul Aziz And Anr.**¹, the Hon’ble Supreme Court observed as follows:

¹ (2013) 2 SCC 488

“8. We find no error in the view taken by the High Court that the CJM, Ahmednagar had not carried out any enquiry or ordered investigation as contemplated under Section 202 Cr.P.C. before issuing the process, considering the fact that the respondent is a resident of District Dakshin Kannada, which does not fall within the jurisdiction of the CJM, Ahmednagar. It was, therefore, incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 Cr.P.C. before issuing the process.

9. The duty of a Magistrate receiving a complaint is set out in Section 202 Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 Cr.P.C. is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

- (i) on the materials placed by the complainant before the court;*
- (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and*
- (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.*

10. Section 202 Cr.P.C. was amended by the Code of Criminal Procedure (Amendment) Act, 2005 and the following words were inserted:

“and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction.”

The notes on clauses for the abovementioned amendment read as follows:

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.”

The amendment has come into force w.e.f. 23-6-2006 vide Notification No. S.O. 923(E) date 21-6-2006.

11. We are of the view that the High Court has correctly held that the abovementioned amendment was not noticed by the CJM, Ahmednagar. The CJM had failed to carry out any enquiry or order investigation as contemplated under the amended Section 202 Cr.P.C. Since it is an admitted fact that the accused is residing outside the jurisdiction of the CJM, Ahmednagar, we find no error in the view taken by the High Court.

12. All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 Cr.P.C. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached by the High Court that the bare allegations of cheating do not make out a case against the accused for issuance of process under Section 418 or 420 I.P.C. The CJM will pass fresh orders after complying with the procedure laid down in Section 202 Cr.P.C., within two months from the date of receipt of this order.”

12. The order dated 04.06.2022 in CS/48665/2022 passed by the Learned Chief Metropolitan Magistrate at Calcutta stated as follows:-

“Complaint filed along with an affidavit and documents by the complainant seeking prosecution of accused U/S 138 of the Negotiable Instrument Act, 1881

Considered

Cognizance is taken

Let the record be transferred to the file of Learned Metropolitan Magistrate 12th Court for enquiry and Disposal According to law.”

13. The order dated 02.07.2022 passed by the Learned Metropolitan Magistrate, 12th Court, Calcutta stated as follows:-

“Received the case record by way of transfer from Learned C.M.M. Calcutta

Today the date is fixed for S/A under Section 200 of Code of Criminal Procedure, 1973

The Complainant filed examination in chief on affidavit.

Ld Advocate for the Complainant prayed to pass necessary order for issuing summon upon the accused, and mentioned that when the cognizance of the case is taken, in such a situation further examination of the complainant is not required under section 200 of the criminal procedure code and referred a decision of the Honourable Supreme Court reported in (2014) 2 Supreme Court Cases (Cri) 652 in support of his contention.

I have very carefully gone through the decision of the Honourable Supreme Court as referred on the part of the complainant with due respect and care and I bow before the decision of the Honourable Supreme Court.

Perused the materials on record.

Considering that from materials available on record Prima facie it appears that there is enough materials to proceed on with the case u/s 138 of N.I. Act against accused person and as per the decision of the Honourable Supreme Court as referred on the part of the Ld Advocate for complainant, the present complainant of this case is not examined under section 200 of criminal procedure cod after cognizance of this case is already been taken

and in the light of the decision as referred on the part of the Ld Advocate for the complainant.

let notice upon the accused person be issued directing him to appear before the Court.

Complainant is directed to file requisites at once.

Fix 03.08.2022 for S/R and appearance of the accused person.”

14. Both the Courts of Learned Chief Metropolitan Magistrate and Learned Metropolitan Magistrate, 12th Court at Calcutta have not complied with the provision of the Section 202 of the Cr.P.C. since the petitioner has been a resident of Howrah which is beyond the jurisdiction of the Court of Metropolitan Magistrate.
15. The cognizance of the offence alleged successively proceeds towards issuance of process to the accused. The concept of taking cognizance of an offence relates to proper application of mind by the Magistrate being an obligation to delve into the allegations in the complaint along with an enquiry to be conducted thereon and statements to be recorded so that there should not be any violation of law to the satisfaction of the Magistrate, prior to summon, the person to appear before the criminal Court and the same should not be treated casually, mechanically or technically as a nominal matter of course.
16. In the instant case, the cognizance was taken without following the provisions of Section 190(1)(a) Cr.P.C., followed by Section 204 of the Cr.P.C. The Magistrate did not consider it to be obligatory to enquire into the case himself or direct investigation by a police officer or by a competent person, according to him to find out whether there was any sufficient ground to accuse who was residing beyond his jurisdiction.

17. The observation of the Learned Metropolitan Magistrate at Calcutta as aforesaid in view of the amended provisions of the Section 202 of the Cr.P.C. which was obligatory on him to adhere to the principles of amended provision of Section 202 Cr.P.C. was failed to be complied with.
18. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***² the Hon'ble Supreme Court observed as follows :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

² 1992 SCC(Cri) 426

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

19. The documents on record are not unimpeachable or of sterling quality whereby the proceedings initiated against the petitioner can be quashed at such nascent stage whether prima facie allegations of being a joint signatory to a cheque can conclusively preclude the petitioner from facing the trial exclusively on the ground of her being a spouse. Her authority to be a

signatory to the cheque whether binds her to legal liability or not cannot be assumed or presumed at this stage which can only be unraveled through the process of trial.

20. This Court in exercising its jurisdiction under Section 482 of the Cr.P.C. can sparingly deduce the basis of a criminal case and cannot act as a Trial Court in dealing with criminal matters where intent and purport of the criminality as alleged requires exhaustive recording of evidence both oral and documentary.
21. In view of the above discussions, the order dated 04.06.2022 and 02.07.2022 are hereby set aside. The Learned Metropolitan Magistrate is directed to exhaust the procedures enumerated under Section 202 of the Cr.P.C. and proceed with further hearing of Complaint Case No. CS/48665/2022 in accordance with law, which is not quashed.
22. In view of the above discussions, the instant criminal revisional application being CRR 3209 of 2023 is disposed of.
23. There is no order as to costs.
24. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
25. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)