

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3211 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 preferred the instant revisional application seeking quashing of Complaint Case No. 48670 of 2022 under Sections 138 and 141 of the Negotiable Instruments Act, 1881, including orders dated 04.06.2022 and 02.07.2022 passed by the Learned 12th Metropolitan Magistrate, Calcutta.
2. It had been the case of the opposite party that a loan initially availed from M/s. Capital First Ltd. had stood transferred to IDFC Bank Ltd. upon merger, pursuant to an order passed by the NCLT, Mumbai Bench, and thereafter the entity had been renamed IDFC First Bank Ltd. The petitioner

had allegedly sought financial assistance amounting to ₹38,90,000/- from the opposite party and, in partial discharge of the said liability, had issued a cheque bearing No. 941368 dated 30.03.2022 drawn on Canara Bank for ₹19,45,000/-. Said cheque, upon presentation to HDFC Bank, Park Street Branch, had been dishonoured due to insufficiency of funds, as per the bank return memo dated 11.04.2022.

3. Subsequently, the opposite party had issued a demand notice dated 11.05.2022 via registered post with acknowledgment due, calling upon the petitioner to clear the outstanding amount within fifteen days. Relying solely on the postal tracking report, and in the absence of the A/D card or returned envelope, the complainant had presumed valid service and proceeded to file a complaint, which had been registered as Case No. CS/48670 of 2022.
4. The petitioner had been arrayed as accused no. 3 along with three other co-accused persons. It had been submitted by the petitioner that the impugned cheque had not borne her signature, nor had she been an authorised signatory of the firm Rajshree Pictures, from whose account the cheque had been drawn. The cheque in question had been issued solely by Suresh Kumar Sharma, proprietor of Rajshree Pictures.
5. The petitioner had further contended that the complaint had contained no averment to the effect that she had been in charge of or responsible for the conduct of the business of Rajshree Pictures. Nonetheless, the Learned Magistrate had issued process mechanically, without conducting the mandatory enquiry under Section 202 Cr.P.C., although the petitioner had resided outside the territorial jurisdiction of the Learned Court.

6. It had been specifically urged that the issuance of process had stood vitiated in view of the judgment of the Hon'ble Supreme Court in In Re: Expeditious Trial of Cases under Section 138 of the N.I. Act, Suo Motu Writ Petition (Crl.) No. 2 of 2020, which had mandated such an enquiry prior to issuance of process in all cases where the accused resided beyond the jurisdiction of the Court.
7. The petitioner had also relied upon Birla Corporation Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610, to contend that the word "shall" in Section 202 Cr.P.C. had rendered the provision mandatory, and non-compliance thereof had constituted a jurisdictional defect, not a mere procedural irregularity.
8. The petitioner had also averred that no valid service of the demand notice, as contemplated under Section 138 of the N.I. Act, had been effected upon her, and in the absence of such service, no cause of action under the said provision had arisen. Despite this, the Learned Magistrate had proceeded to issue process solely on the basis of the complainant's affidavit, without adequate scrutiny of the materials on record.
9. Accordingly, the petitioner had prayed for quashing of the said complaint and the impugned orders, on the grounds of non-compliance with statutory mandates, absence of foundational ingredients of offence under Sections 138 and 141 of the N.I. Act, and mechanical application of mind by the Learned Magistrate.
10. The Learned Advocate representing the petitioner had submitted that the cheque bearing no. 941368 dated 30.03.2022 for an amount of

Rs.19,45,000/-, drawn on Canara Bank, had been issued and signed solely by the authorized signatory of Rajshree Pictures, namely, accused no.1 Suresh Kumar Sharma, and not by the petitioner, who had not been a signatory thereto. It had been further contended that no allegation had been levelled in the complaint to the effect that the petitioner had been an authorized signatory of the said firm or had been in charge of or responsible for the conduct of its business, and therefore, no vicarious liability could have been fastened upon her.

11. It had been further urged that the petitioner had been residing outside the territorial jurisdiction of the Learned Court, and in such circumstances, an enquiry under Section 202 Cr.P.C. had been mandatory before issuance of summons. The Learned Magistrate, however, had issued process mechanically and without conducting such enquiry, thereby contravening the binding directions issued by the Hon'ble Supreme Court in In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, Suo Motu W.P. (Crl.) No. 2 of 2020.
12. Reliance had been placed by the petitioner on the decision of the Hon'ble Apex Court in Birla Corporation Ltd. v. Adventz Investments and Holdings Ltd., (2019) 16 SCC 610, wherein it had been held that issuance of process under Section 204 Cr.P.C. should not be a mechanical act and that a Magistrate must apply his mind to the material on record, especially when the accused resides beyond the territorial jurisdiction of the Court. The petitioner had argued that non-compliance with the mandatory requirement under Section 202 Cr.P.C. had vitiated the order taking cognizance.

13. The Learned Advocate had also submitted that the mandatory pre-condition for institution of a complaint under Section 138 of the N.I. Act, i.e., service of demand notice, had not been complied with in the present case. It had been contended that there had been no material to establish that the petitioner had received the statutory demand notice, and a mere presumption on the basis of postal tracking information could not have been treated as conclusive proof of service. The opposite party had proceeded on the basis of deemed service without any acknowledgment or returned envelope and had initiated the complaint case solely on such presumption.
14. Written notes of argument had also been filed wherein it had been reiterated that the petitioner had been implicated in the complaint solely by virtue of her status as co-applicant and guarantor in the loan agreement, and no factual or legal basis had been laid down to demonstrate her connection with the dishonoured cheque or the bank account from which it had been issued. The petitioner had not been a drawer of the cheque in question nor had the cheque been issued from a joint bank account held by her. It had been emphasized that under the scheme of the N.I. Act, a complaint under Section 138 could only lie against the drawer of the cheque and not against a third party merely on the basis of spousal relationship with the drawer.
15. It had been highlighted that the cheque had been issued from a current account in the name of Suresh Kumar Sharma, sole proprietor of Rajshree Pictures, and that the petitioner had not been connected with the said proprietary concern in any manner whatsoever. The petitioner had relied on the judgment of the Hon'ble Punjab & Haryana High Court in Shalu Arora v.

Tanu Bathla, decided on 30.11.2023, wherein it had been held that mere marital relationship with the drawer of the cheque did not give rise to any presumption of liability under Section 138 of the N.I. Act, nor could such relationship be the basis for prosecution.

16. It had further been contended that the opposite party had failed to rebut the petitioner's specific contention that she had neither issued nor signed the cheque in question, and no material had been brought on record to show that she had been a joint account holder or had any role in the issuance of the cheque. The complaint petition had been silent on these material aspects and the order of the Learned Magistrate had been passed in a mechanical manner, without any application of mind or proper scrutiny of the documents. Accordingly, the petitioner had prayed for quashing of the entire proceeding in Case No. CS/48670 of 2022 insofar as it concerned her.
17. The petitioner had invoked the revisional jurisdiction of this Court seeking quashing of Complaint Case No. 48670 of 2022 under Sections 138 and 141 of the Negotiable Instruments Act, 1881, along with orders dated 04.06.2022 and 02.07.2022 passed by the Learned 12th Metropolitan Magistrate, Calcutta. The petitioner had been arrayed as accused no. 3 on the allegation of having jointly availed a loan facility, against which a cheque for ₹19,45,000/- bearing no. 941368 dated 30.03.2022 drawn on Canara Bank had been issued in partial discharge of the alleged liability. The said cheque, having been dishonoured due to insufficient funds, had led to issuance of a statutory notice dated 11.05.2022 and subsequent filing of the complaint.

18. It had been the specific case of the petitioner that she had neither signed the cheque in question nor had been an authorised signatory of Rajshree Pictures, the proprietorship concern from whose account the cheque had been drawn by accused no. 1, Suresh Kumar Sharma. The complaint had contained no averment that the petitioner had been responsible for or involved in the business of the said firm. It had also been contended that no demand notice had been served upon her in accordance with law, and that the presumption of deemed service based solely on postal tracking without any acknowledgment due card or returned envelope had been legally untenable.
19. The petitioner had further submitted that the Learned Magistrate had issued process without conducting the mandatory inquiry under Section 202 Cr.P.C., despite the petitioner residing outside the territorial jurisdiction of the Court. In support of her contention, reliance had been placed on the judgments of the Hon'ble Supreme Court in *In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, Suo Motu Writ Petition (Crl.) No. 2 of 2020*, and *Birla Corporation Ltd. v. Adventz Investments & Holdings Ltd.*, (2019) 16 SCC 610, which had categorically held that the word "shall" in Section 202 Cr.P.C. made the enquiry mandatory in such cases and non-compliance thereof vitiated the issuance of process.
20. The petitioner had also relied upon the judgment of the Hon'ble Punjab & Haryana High Court in *Shalu Arora v. Tanu Bathla*, decided on 30.11.2023, to assert that mere marital relationship with the drawer of the cheque could

not attract criminal liability under Section 138 of the N.I. Act, absent proof of joint signatory status or active involvement in the issuance of the cheque.

21. In her written notes of arguments, the petitioner had reiterated that she had been named solely as a co-applicant and guarantor in the loan agreement, which by itself did not give rise to criminal liability under the N.I. Act. The cheque in question had been drawn from a current account maintained solely in the name of accused no. 1, and no material had been placed on record by the opposite party to establish any connection of the petitioner with the proprietary concern Rajshree Pictures or with the issuance of the dishonoured cheque.
22. In light of the aforementioned contentions, the petitioner had prayed for quashing of the entire proceeding in Complaint Case No. CS/48670 of 2022, insofar as it concerned her, on the grounds of lack of foundational ingredients under Sections 138 and 141 of the N.I. Act, absence of valid service of demand notice, and non-compliance with mandatory procedural requirements under Section 202 Cr.P.C.
23. 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.”

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

“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

¹ (2013) 2 SCC 488

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.”

25. The order dated 04.06.2022 in CS/48670/2022 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.”

26. 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.”

27. 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.

28. 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.
29. 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.
30. 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.
31. 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

² 1992 SCC(Cri) 426

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.

(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.”

32. 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.

33. 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.

34. 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/48670/2022 in accordance with law, which is not quashed.

35. In view of the above discussions, the instant criminal revisional application being CRR 3211 of 2023 is disposed of.

36. There is no order as to costs.

37. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.

38. 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.)