

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

Present:

Justice Bibhas Ranjan De

C.R.R. 3905 of 2024

Nirmalendu Halder

Vs.

The State of West Bengal & Anr.

For the Petitioner

:Mr. Sanjay Kumar Sarkar, Adv.
Ms. Sayani Sarkar, Adv.

For the opposite party no.2

:Mr. Pranit Bag, Adv.
Mr. Rahul Poddar, Adv.
Mr. Riddhiman Mukherjee, Adv.
Mr. Souvik Banerjee, Adv.

Last Heard on

:12.06.2025

Judgment on

:17.06.2025

Bibhas Ranjan De, J.

1. This is an application under Section 442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita (for short BNSS) [corresponding to Section 401 read with Section 482 of the Code of Criminal Procedure] with a prayer for quashment of the proceeding of the Complaint Case no. CN 3719 of 2023, presently pending before the Court of Ld. Metropolitan Magistrate, 3rd Court, Calcutta.
2. The case of the petitioner in a nutshell is that the petitioner is a whole seller of fertilizer, manure and pesticides. Allegedly the opposite party no. 2 herein/company approached the petitioner for sale and supply of some organic manures and in response the petitioner agreed to purchase some organic manures but unfortunately those products came out as inactive. The farmers and the retailers who purchased those products from the petitioner made a complaint to him and in the laboratory test the products came out as not organic and as a sequel the petitioner incurred losses to the tune of Rs. 20 lacs approximately. However, allegedly the opposite party no. 2 using influence compelled the petitioner to deliver an undated and unamounted cheque as security in the month

of January 2023. That said cheque was presented on 14.08.2023 to the official banker of the opposite party no. 2 which was dishonored and got returned on 16.08.2023 vide a return memo with the remarks “funds insufficient”. Thereafter, on 19.10.2023 a complaint was filed by the opposite party no. 2 herein before the Court of Ld. Additional Chief Metropolitan Magistrate, Calcutta wherein cognizance was taken and the case was transferred to the Ld. Metropolitan Magistrate, 3rd Court, Calcutta for enquiry and disposal. Being aggrieved with the said prosecution, the petitioner has approached this Court for invoking inherent jurisdiction.

- 3.** Mr. Sanjay Kumar Sarkar, Ld. Counsel, appearing on behalf of the petitioner has vociferously contended that in the complaint lodged at the behest of the opposite party no. 2, there is no specification of existing legally enforceable liability against the petitioner which is a *sine qua non* for taking cognizance of the charge under Section 138 of the Negotiable Instruments Act (for short N.I. Act). Mr. Sarkar has further submitted that the opposite party no. 2 is a culprit for supplying chemical manures instead of organic

manures due to which the petitioner has incurred enormous financial loss.

4. Alternatively, Ld. Counsel has made an apparent presumption that the amount and date written in the said cheque is not of the petitioner as there is no match with his hand writing of signature on the cheque in question which is actually a fake one. Therefore, the petitioner must not be made a victim to a grueling criminal prosecution.
5. In support of this contention, he has relied on a set of cases which run as follows:-

- ***New Tech Pesticides Ltd., Rep. By its vs Pavan Commercial Corportion, Prop., I(2007) BC375***
- ***Taher N. Khambati vs Vinayak Enterprises and Ors., 1994(2) ALT (CRI)681***
- ***Municipal Corporation of Delhi vs. Ram Kishan Rohatagi, AIR 1983 Supreme Court 67***
- ***M/s Indus Airways pvt. Ltd and Ors vs M/s Magnum Aviation Pvt Ltd and Anr ,2014 (12) SCC 539***
- ***State of Haryana and others vs Ch.Bhajan Lal and others, AIR1992 Supreme Court 604***

- 6.** Per contra, Mr. Pranit Bag, Ld. Counsel, appearing on behalf of the opposite party no. 2 by refuting the claims made by Mr. Sarkar has submitted that the opposite party no. 2 supplied pesticide, manure and fertilizers pursuant to the order placed by the petitioner and accordingly raised an invoice for disbursement of due amount. However, in partial discharge of the said enforceable debt/liability, the petitioner issued an account payee cheque bearing cheque no. 031467 drawn on Bank of India, in favour of the petitioner to the tune of Rs. 16,68,982/-.
- 7.** When the said cheque was presented to the official banker of the opposite party no. 2 it returned as dishonoured due to insufficiency of funds. Thereafter a demand notice dated 12.09.2023 was served to the petitioner for demanding the said sum within fifteen (15) days from the date of receipt of the said notice. It is an admitted position that the notice was duly served but no response or payment was ever made and finding no alternative the impugned proceeding was instituted by the opposite party no. 2.
- 8.** Therefore, Mr. Bag has tried to make this Court understand that all the requisite formalities of the N.I. Act have been

duly complied with and there is clear description of the legally enforceable debt in the complaint made. As a sequel, no requirement is there for thwarting the impugned proceeding at this nascent stage.

Analysis:-

9. Before embarking onto the path of dispute adjudication, I feel it would be just and proper to first pry into the track of evaluation of the cases relied on behalf of the Petitioner.
10. In ***Pavan Commercial*** (supra) & ***Taher N. Khamati*** (supra) the Hon'ble Court came across a case of issuance of blank cheque after completion of trial which is not at all identical with the case of ours.
11. ***M/s. Indus Airways Pvt.*** (supra) dealt with issuance of advance cheque unlike the case here where the cheque was issued only after supply of the ordered goods.
12. Finally coming to the case of ***Bhajanlal*** (supra) it is manifestly clear the none of the parameters envisaged in the celebrated judgment has any sort of applicability to the case at hand.
13. Therefore, having heard the rival submissions adduced on behalf of the parties to this revision application, it has

come to the notice of the Court that the main grievance of the petitioner is to the effect that there is no specific description of the legally enforceable debt in the official complaint and moreover the hand writing of the date and amount mentioned in the cheque has no similarity with the official signature of the petitioner on that very cheque which leads to an **apparent presumption** on the part of the petitioner that the said cheque is a fake one.

14. Firstly coming to the issue of non-compliance of specific provision of N.I. Act with regard to framing of charge, the main dispute revolves around non-description of legally enforceable debt but if I make a keen observation of the official complaint which culminated to the impugned proceeding, especially paragraphs no. 3 & 4, it would be clear that there are specific averments with regard to the due amount which was raised only after supply of the materials ordered by the petitioner. Therefore, the plea of non-compliance with the provision of N.I. Act does not arise.

15. Alternatively coming to the issue of forged hand writing on the disputed cheque, even if I consider the plea of the petitioner as gospel truth still that issue pertains to the

realm of evidence as it is a question of disputed facts which can only be ascertained after extensive trial. It would also be pertinent to mention that the petitioner shall have ample opportunity to prove his innocence at the time of trial and therefore I find hardly any reason at this stage to make any kind of interference with the proceeding impugned.

16. In this regard it would be profitable to reiterate that Hon'ble Apex Court in various landmark decisions has made a very clear suggestion that the High Court's while exercising its power under Section 482 of the CrPC **is not required to conduct a mini trial** as this is not the stage where the prosecution/ investigating agency is required to prove the charges.

17. As at the stage of discharge and /or while exercising the power under Section 482 of the CrPC, the Court has a very limited jurisdiction and is only required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not." In addition to that the Hon'ble Apex Court has further held that at the **initiation of the Criminal Proceedings, whether the criminal proceedings are malicious or not, is**

not required to be considered at the stage of quashing as it is required to be considered only at the conclusion of the Trial.

18. Keeping in mind that context, in no stretch of the imagination, it can be said that the allegation made in the complaint is devoid of merits and does not prima facie constitute the alleged offence. It is too premature a stage, to focus on the veracity of the case at hand as it is a settled proposition of law that **the High Court in exercise of it's jurisdiction under Section 482 of Cr.P.C does not function either as a Court of appeal or revision, also having no power to conduct a mini trial.**

19. In light of the above principle, I am unable to interfere with impugned proceeding at this stage by invoking power under Section 482 of CrPC as all the material contradictions with regard to the alleged occurrence is a subject matter of trial and from careful perusal of the available evidence this Court cannot conclude that the allegations made in the complaint do not prima facie make out any offence. Nor can it conclude that the allegations made therein are patently and inherently improbable which will make the instant

revision application a fit case for quashing as per the exhaustive guidelines of the Hon'ble Apex Court.

20. Lastly, it is trite law that exercise of inherent power under Section 482 of the Cr.P.C is not the rule but it is an exception which can be applied only if it appears to the Court that miscarriage of justice would be committed if the trial is allowed to proceed further.

21. In the premises set forth above, I find no necessity at all to thwart the impugned proceeding at this nascent stage of trial by invoking extra ordinary jurisdiction after considering factual matrix of the case at hand as all the essential ingredients to constitute a prima facie case against the petitioner under the N.I. Act is made out.

22. As sequel, the revision application no. CRR 3905 of 2024, being devoid of merits, stands dismissed.

23. Connected applications, if there be any, stand disposed of accordingly.

24. All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.

- 25.** 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.]