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

% ***Date of decision: <u>31.07.2025</u>***

+ **CRL.M.C. 133/2021, CRL.M.A. 4950/2022**

ASHOK KUMAR .....Petitioner

Through: Mr. Dilip Singh, Advocate.

versus

STATE & ANR. .....Respondents

Through: Mr.Sanjeev Sabharwal, APP for State with SI Naresh Kumar. Mr.Manish Kaushik, Mr.Vikas Ashwani, Mr.Yashpriya Sahran, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

<u>ARUN MONGA, J. (ORAL)</u>

1. The petitioner is before this Court impugning the order dated 10.11.2020 passed by the learned Sessions Court in Crl. Rev. No.197/2019, whereby the orders dated 30.04.2019 (order to frame of charge under Section 406 of IPC) and 16.05.2019 (formal framing of charge), passed by the learned MM, Tis Hazari, Delhi, in Case No.2933/2018 arising out of FIR No.98/2014 dated 11.02.2014 under Section 406 IPC, registered at PS Khayala, Delhi, were set aside.

2. Brief background, shorn of unnecessary details, leading to filing of the present petition is that on 22.05.2013, respondent no.2 filed a complaint

under Section 138 NI Act against the petitioner, alleging a financial loan of Rs.21,55,000/-. The petitioner contends that the cheque in question, issued between 1999–2002, was misused after 11 years and was originally given as security for a chit fund operated by the respondent.

2.1 Following this, the petitioner lodged a complaint under Section 156(3) Cr.P.C. in July 2013(date not clear), whereby learned MM *vide* order dated 04.02.2014 directed the registration of the FIR and accordingly, the instant FIR No. 98/2014 dated 11.02.2014 was registered under Section 406 IPC. After investigation and recording of witness statements, the police filed a charge-sheet for offences under Sections 406/420 IPC. Thereafter, *vide* an impugned order dated 30.04.2019, the learned Magistrate, on consideration of the material and circumstantial evidence, held that the respondent no.2 had misappropriated the security cheques and that sufficient grounds existed to proceed. Thereafter, *vide* a separate order dated 16.05.2019, a formal charge under Section 406 IPC was framed against the respondent no.2.

2.2 The respondent no.2, in a revision petition, challenged the order framing charges leading to the impugned order herein.

3. In the aforesaid backdrop, I have heard the contentions of the learned counsels for the parties and perused the case file.

4. Learned counsel for the petitioner would argue on the lines of grounds pleaded in the petition *inter alia* as below:-

4.1 There is a strong prima facie case under Section 406 IPC, as the evidence clearly shows misuse of security cheques. The Magistrate rightly framed the charge without any illegality. That the cheques were given as security, and the respondent failed to explain the alleged loan of ₹21,00,000 or provide supporting documents. Statements of other chit fund subscribers confirmed the practice of taking security cheques. The respondent's own pleadings indicate the offence, while the Sessions Judge wrongly set aside the order by conflating provisions of the NI Act with IPC and relying on presumptions under Section 139 NI Act. Misusing security cheques after 11 years cannot be justified, and the reasoning of the Sessions Judge is contrary to the legal principles of criminal breach of trust.

4.2 that the learned Sessions Judge overlooked the settled legal position on framing of charge. He would place reliance on the law laid down in ***State of Bihar v. Ramesh Singh AIR 1977 SC 2018,Union of India v. Prafulla Kumar Samal, AIR 1979 SC 366***, ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), AIR 2010 SC 1446***, and ***C.P. Malik v. State, (1999) 81 DLT 92***. Said judgements clearly establishe that at the stage of framing charge, the Court is only to see whether a *prima facie* case exists on the basis of material placed on record, and not to meticulously weigh evidence or probable defences;

4.3 that quashing a charge is an exception and should only occur in rare cases where the facts do not constitute an offence or there is a legal bar to proceedings. Revisional jurisdiction under Section 397 Cr.P.C. is limited and supervisory, not meant for reappreciating evidence or substituting conclusions of the Magistrate. The Sessions Court exceeded its powers by interfering without justification, as there is sufficient material to proceed with the trial, and no circumstances warranting quashing exist.

5. Opposing the aforesaid, learned counsel for respondent no.2 as well

as learned APP would contend that an offence under Section 406 IPC cannot apply in the case in hand against the payee or holder of cheques simply because there is no entrustment. The payee legally owns the negotiable instrument. The presumption under Section 139 of the Negotiable Instruments Act (NI Act) applies, as no steps were taken to invalidate the cheques. Three cheques were issued to the respondent, who is the payee and holder, so the statutory presumption of liability exists. The petitioner alleges the cheques were given in 2002-03, while the respondent claims 2013; however, the same is matter of trial under the NI Act. As long as this presumption under section 139 of the NI Act stands, allegations of criminal breach of trust under Section 406 IPC cannot be sustained. The NI Act, being a special law, overrides IPC provisions. Once presumption under Section 139 is drawn, the complainant need not prove the source of funds, the burden shifts to the accused to rebut the presumption by showing a probable defence.

6. Having heard the submissions made by both the parties, I shall now render my decision by recording reasons in the succeeding part.

7. First and foremost, perusal of the impugned order dated 10.11.2020 passed by the learned Sessions Judge would reveal that the respondent no.2 had earlier filed a complaint under Section 138 NI Act for dishonour of three cheques amounting to Rs.21,55,000/- issued by the petitioner. While that case was pending, as a counter blast, the petitioner herein lodged a complaint in July 2013 under Section 156 of Cr.P.C. alleging that the cheques were given as security for chit funds in 2002 and were misused after he had repaid all dues. Pursuant thereto *vide* order dated 04.02.2014

passed by learned MM, the instant FIR dated 11.02.2014 was registered, and in the trial arising therefrom, charge under Section 406 IPC were framed *vide* order dated 16.05.2019.

7.1 The learned Sessions court held that entrustment of blank cheques as security does not amount to misappropriation under Section 405 IPC. The impugned order of learned MM framing charge was set aside, and the respondent no.2 was discharged. It was observed, in my view too, rightly so, that if manipulation of cheques is proved in the NI Act case, separate legal consequences may follow.

8. Having perused the impugned order dated 10.11.2020 and the reasoning therein, I am unable to take a different view from the one taken in the aforesaid order.

9. Further, a cheque is negotiable instrument governed by the provisions of the Negotiable Instruments Act, which is a special law dealing with the rights and obligations arising from such instruments. Any alleged misuse, including filling in particulars or presenting the cheque, is covered under Sections 138 of the NI Act. As per the settled principle that special law prevails over general law, the matter has to be adjudicated under the NI Act rather than invoking the IPC in the absence of clear evidence of forgery or unlawful conversion.

10. Once the issuance of the cheques is established, Section 139 of the NI Act raises a statutory presumption that the cheque is issued towards discharge of a legally enforceable debt or liability. This presumption is rebuttable, but the burden lies on the drawer to disprove it during the NI Act proceedings.

11. Permitting simultaneous IPC proceedings on the same facts would thus run contrary to the statutory presumption and create a risk of conflicting findings in the present case.

12. The case under Section 406 IPC appears to have been initiated as a counterblast to the NI Act complaint. There is no independent evidence suggesting misappropriation or breach of trust. Mere failure to return security cheques or the allegation of misuse does not amount to an offence under Section 406 IPC without proof of dishonest intention and entrustment in a fiduciary capacity.

13. Furthermore, allowing parallel proceedings on the same cause of action would amount to abuse of process of law. Criminal law cannot be used as a tool for settling scores or as a defensive measure against civil or special statute proceedings. The delay in initiating the complaint further makes the case of the complainant a complete suspect. The cheques were issued between 1999 and 2002, yet the complaint under section 406 IPC etc. was lodged only after the NI Act notice was received in 2013, clearly indicating an afterthought and mala fide intent.

14. Moreover, qua merits of the culpability, as alleged, I am of the opinion that the essential ingredient for constituting an offence under Section 406 IPC is the existence of dishonest intention at the time of entrustment. In the present case, the cheques were given as security for a chit fund nearly a decade earlier. There is no evidence to suggest that, at the time of entrustment, the respondent no.2 had any dishonest intention to misappropriate them. Subsequent presentation of the cheques in a disputed financial transaction does not automatically establish the requisite *mens rea*

for criminal breach of trust

15. Thus, under Section 406 IPC, mere entrustment of signed blank cheques as security is not unlawful, and allegation of filling in details by the payee at a later stage does not by itself constitute forgery or breach of trust under criminal law. Therefore, even otherwise, the essential elements of Section 406 IPC are not satisfied, and continuation of the proceedings before the learned MM would have been wholly unjustified.

16. As an upshot, I see no ground to interfere with the impugned order passed by the learned Sessions Court. Accordingly, the petition stands dismissed.

ARUN MONGA, J

JULY 31, 2025
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