

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.6638 OF 2021

BETWEEN:

1. RASHMI TANDON
W/O SRI KAMAL TANDON
55 YEARS,
NO.23, RAJMAHAL VILAS
2ND STAGE,
JUDICIAL OFFICERS LAYOUT,
GEDDALAHALLI EXTENSION,
SANJAYNAGAR WARD NO.100,
BENGALURU – 560 094.
2. RAJESH G.,
S/O GANGADHAR R.,
35 YEARS
NO.740/2, 4TH CROSS,
PIPELINE ROAD,
YESHWANTHAPURA
NEAR UNION BANK
BENGALURU – 560 022.

... PETITIONERS

(BY SRI S.G.BHAGAVAN, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY THE STATION HOUSE OFFICER
MALLESHWARAM POLICE STATION,
MALLESHWARAM SUB-DIVISION
BENGALURU CITY – 560 003.

2. SOMASHEKAR B.,
S/O C.N.BANAVAIAH
43 YEARS
NO.55, 1ST CROSS
1ST FLOOR, MALLESHWARAM
BENGALURU – 560 003.

... RESPONDENTS

(BY SRI B.J.ROHITH, HCGP FOR R1;
SRI DEVI PRASAD SHETTY, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN FIR IN CR.NO.088/2021 DATED 22.07.2021 OF MALLESHWARAM POLICE STATION, MALLESHWARAM SUB-DIVISION, BENGALURU CITY FOR AN OFFENCE P/U/S 420 OF IPC AND PENDING ON THE FILE OF XXXII ADDL.C.M.M., BENGALURU IN P.C.R.NO.3645/2021, FOR THE OFFENCE P/U/S 420 OF IPC, IN SO FAR AS THE PETITIONERS ARE CONCERNED.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 31.03.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question the proceedings in Crime No.88 of 2021 registered on 22-07-2021 for the offence punishable under Section 420 of the IPC.

2. Heard Sri S.G.Bhagavan, learned counsel for the petitioners, Sri B.J.Rohith, learned High Court Government

Pleader for respondent No.1 and Sri Deviprasad Shetty, learned counsel for respondent No.2.

3. Brief facts leading to the filing of the present petition as borne out from the pleadings, are as follows:-

The 2nd respondent is the complainant. The petitioners were the Directors of the Company by name Headwin Exim Private Limited ('the Company' for short). The Company was engaged in the business of import. It appears that the Directors of the Company approached the 2nd respondent/complainant seeking financial assistance to meet immediate financial needs that arose in its business. A transaction between the two take place and the complainant claims to have assisted the Company with finance of Rs.30,00,000/- initially and Rs.5,00,000/- later. The financial assistance was rendered between July 2015 and September, 2015 against which, the Company had issued five cheques totally to the aforesaid amount. The cheques when presented for realization were returned with the endorsement "account closed". The legal requirements necessary for initiation

of proceedings invoking the Negotiable Instruments Act, 1881 ('the Act' for short) was taken up by the complainant and later initiated proceedings under Section 138 of the Act in C.C.No.426 of 2020. The same is pending consideration before the competent Court. The case at hand does not concern with C.C. No.426 of 2020 filed under the Act. It is what the complainant does after invoking the provisions of the Act is what concerns the present petition.

4. On the same instrument of issuance of cheques for which proceedings had initiated under Section 138 of the Act, the complainant registered a private complaint invoking Section 200 of the Cr.P.C. alleging cheating under Section 420 of the IPC on the part of the Company and its Directors. The learned Magistrate, on registration of the said private complaint, directs investigation under Section 156(3) of the Cr.P.C. The Police pursuant to the aforesaid direction under Section 156(3) of the Cr.P.C., registers a FIR in Crime No.88 of 2021. It is at that juncture, the petitioners have knocked the doors of this Court in

the subject petition. The petitioners are accused 4 and 5 in the FIR.

5. The learned counsel appearing for the petitioners would submit that the complainant having invoked the jurisdiction of the competent criminal Court by filing a complaint alleging offence punishable under Section 138 of the Act could not have again registered a complaint for the offence of cheating. It would amount to filing two complaints for the same offence. He would further submit that the private complaint so registered for the offence punishable under Section 420 IPC runs counter to the judgment of the Apex Court in the case of **PRIYANKA SRIVASTAVA V. STATE OF U.P.**, reported in **(2015) 6 SCC 287** as there is no indication of following the mandate enunciated in **PRIYANKA SRIVASTAVA** and he would seek that the petition be allowed and proceedings be quashed.

6. On the other hand, the learned counsel appearing for the respondent No.2 would vehemently refute the submissions and contends that invoking Section 138 of the Act will not

preclude the complainant from registering a crime for offence punishable either under Section 406 or 420 of the IPC as it does amount to cheating and inducement on the part of the accused. It is a matter of trial in which the petitioners have to come out clean and seeks dismissal of the petition.

7. The learned High Court Government Pleader in his submissions toe lines of the learned counsel for respondent No.2.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

9. The afore-narrated facts are not in dispute. The issue that falls for my consideration is,

Whether the complaint invoking Section 200 of the Cr.P.C. for offence punishable under Section 420 of the IPC would become maintainable after initiation of proceedings invoking Section 138 of the Act?

10. Issuance of cheques, they getting dishonoured and all other factual narration are not required to be reiterated. The issue with regard to registration of criminal case for offence punishable under the IPC notwithstanding registration of case under the Act need not detain this Court for long as the Apex Court in the case of **SANGEETABEN MAHENDRABHAI PATEL V. STATE OF GUJARAT & ANR**¹ has held as follows:

“37. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 of the NI Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.

*38. In the case under the NI Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. **Such a requirement is not there in the offences under IPC. In the case under the NI Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability.** There cannot be such a requirement in the offences under IPC. The case under the NI Act can only be initiated by filing a complaint. However, in a case under IPC such a condition is not necessary.*

¹ (2012) 7 SCC 621

39. There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.”

(Emphasis supplied)

The Apex Court considers the very issue of whether a petition under Section 420 of the IPC would be maintainable, during the pendency or even after conviction under Section 138 of the Act. The Apex Court holds that the two operate in different fields.

11. In a case under the Act what is required to be noticed is, whether it is for a legally enforceable debt and a fine is imposed. In an offence involved on the same instrument under Sections 406 or 420 IPC sentence of seven years can be imposed and the element *mens rea* is what is required to be seen in a case for offence of cheating under Section 420 of the IPC *inter alia*. The Apex Court holds that there can no question of it being violative of Article 20(2) of the Constitution of India or Section 300(1) of the Cr.P.C. as it does not amount to double jeopardy. Therefore, the submission of the learned counsel appearing for the petitioners that the proceeding for offence punishable under

Section 420 of the IPC is not maintainable once the complainant invokes Section 138 of the Act is unacceptable. It is a matter of trial for the petitioners to come out clean.

12. The other issue urged is that the complaint registered is contrary to the judgment in the case of **PRIYANKA SRIVASTAVA** (*supra*). The Apex Court has in the aforesaid judgment held that prior to registration of a private complaint it should be demonstrated in the complaint that the complainant has made efforts to register a complaint before the jurisdictional police and that having not entertained the only way to proceed in the matter is by registration of a complaint under Section 200 of the Cr.P.C. The other mandate of the judgment is that if the investigation under Section 156(3) of the Cr.P.C. is sought for in a private complaint, it shall be accompanied by an affidavit of the complainant. A perusal at the impugned complaint would clearly indicate that the complaint is in compliance with the mandate of the judgment in the case of **PRIYANKA SRIVASTAVA** as the complainant in the complaint narrates the

efforts taken for registration of a crime before the Police and the affidavit accompanies the complaint.

13. Therefore, the complaint registered is also not in violation of the judgment of the Apex Court in the case of **PRIYANKA SRIVASTAVA**. There is no other document produced that is so unimpeachable that would warrant interference at the hands of this Court under Section 482 of the Cr.P.C. The contentions advanced by the learned counsel for the petitioners are thus untenable.

14. For the reasons mentioned above, finding no merit in the petition, the petition stands dismissed.

**Sd/-
JUDGE**

bkp
CT:MJ