

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2675 of 2022

Moina Khatoon, aged about 42 years, Md. Mazhar, Prop. of M/s. Western Enterprises, Ramgarh, Resident of Village-Kothar, Main Road, Near Mahto Petrol Pump, P.O. & P.S.-Ramgarh, Dist.-Ramgarh, Jharkhand

.... Petitioner

Versus

1. The State of Jharkhand
2. Abhishek Kumar Verma, son of Sri Aditya Kumar Verma, aged about 32 years, resident of Village-Chitarpur, Main Road, P.S.-Rajrappa, Dist.-Ramgarh (Jharkhand)

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioners	: Mr. Razaullah Ansari, Advocate
For the State	: Mr. Shiv Shankar Kumar, Addl. P.P.
For O.P. No.2	: Mr. Pratik Sen, Advocate

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the order dated 11.12.2019 passed by the learned Chief Judicial Magistrate, Ramgarh by which cognizance has been taken by the learned Chief Judicial Magistrate, Ramgarh for the offence punishable under Section 138 of N.I. Act and for quashing the entire

criminal proceeding in connection with Complaint Case No. 511 of 2019.

3. The brief fact of the case is that the petitioner issued a cheque for Rs.80,000/- in favour of the complainant in respect of purchase of cement from the shop of the complainant in the name of M/s. Abhinav Trading. On 08.04.2019, the complainant presented the cheque in Bank of India, Ramgarh Branch. The cheque was dishonoured as the amount of the cheque exceeded the arrangement for payment. On 28.06.2019 the complainant again presented the cheque of Rs.80,000/- and another postdated cheque for Rs.64,400/- in Bank of India, Ramgarh Branch for encashment but both the cheques were dishonoured due to the amount mentioned in the cheque was exceeding the arrangement. The complainant met the petitioner and demanded to pay the entire dues to him. On 17.07.2019 the complainant received a legal notice by which the complainant came to know that the petitioner has committed forgery. The complainant on 27.07.2019 issued a legal notice to the petitioner through his Advocate demanding payment of the amount mentioned in the cheque along with the other money due in total Rs.2,23,031/- within 15 days of receipt of such notice but within the stipulated time, the cheque amount of Rs.1,44,400/- and the other dues of the complainant of Rs.78,631/- was not paid by the petitioner which in total amount to Rs.2,23,031/-. Hence, the complainant filed the complaint.
4. The learned Chief Judicial Magistrate, Ramgarh considering the materials in the record found *prima facie* case for the offence

punishable under Section 138 of N.I. Act and issued summons to the petitioner to face the trial.

5. It is submitted by the learned counsel for the petitioner that the petitioner is quite innocent and has not received the legal notice. It is next submitted by the learned counsel for the petitioner that the authorized agent and partner of the complainant-opposite party no.2 namely Mukesh Kumar has received Rs.5,58,370/- and the petitioner has also filed Complaint Case No. 478 of 2019 against the complainant-opposite party no.2. It is further submitted by the learned counsel for the petitioner that the petitioner has not issued the cheque which has been dishonoured and the opposite party no.2-complainant took blank cheque but even after payment of money to him by the petitioner, he has not returned the cheque rather filled up the huge amount of Rs.2,23,031/-. Hence, it is submitted that the entire criminal proceeding including the order dated 11.12.2019 passed by the learned Chief Judicial Magistrate, Ramgarh in connection with Complaint Case No. 511 of 2019 be quashed and set aside.
6. Learned Additional Public Prosecutor and the learned counsel for the opposite party no.2 on the other hand opposes the prayer for quashing the entire criminal proceeding including the order dated 11.12.2019 passed by the learned Chief Judicial Magistrate, Ramgarh in connection with Complaint Case No. 511 of 2019. It is submitted by the learned Addl. P.P. and the learned counsel for the opposite party no.2 that all the contention on the basis of which the petitioner seeks quashing of the cognizance order and the entire criminal

proceeding, are the defence of the petitioner, which the petitioner can take during the trial and certainly, at this stage the court cannot embark upon the inquiry to test the veracity of the defence of the petitioner in exercise of its jurisdiction under Section 482 Cr.P.C. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

7. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that the contention of the petitioner is that even though the debt of the opposite party no.2-complainant has been paid by the petitioner still the complainant has used the blank cheque issued by the petitioner for filling the cheque amount therein.
8. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of M.P. vs. Awadh Kishore Gupta & Others** reported in **(2004) 1 SCC 691** that the High Court could not embark upon an enquiry as to whether the evidence is reliable or not as that would be the function of the trial court.
9. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Monica Kumar (Dr.) & Another vs. State of Uttar Pradesh & Others** reported in **(2008) 8 SCC 781**, that the inherent power under Section 482 Cr.P.C. should not be exercised to stifle a legitimate prosecution.
10. In the case of **Shiji @ Pappu & Others vs. Radhika & Another** reported in **AIR 2012 SC 499**, the Hon'ble Supreme Court of India has observed that plentitude of power under Section 482 Cr.P.C. by

itself makes its obligatory for the High Court to exercise the same with utmost care and caution.

11. Now whether or not the petitioner has discharged the debt for which the cheques were issued is a pure question of fact, the veracity of which can only be determined in a full dress trial of the case and certainly, the same being basically a defence of the petitioner cannot be a ground to quash the entire criminal proceeding in exercise of the power under Section 482 Cr.P.C.
12. Accordingly, this criminal miscellaneous petition being without any merit is dismissed with liberty to the petitioner to take the defence at appropriate stage during the trial.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 15th May, 2024
AFR/Sonu-Gunjan/-