

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

Reserved on: 17<sup>th</sup> January 2008  
Date of decision: 31st January 2008

CRL.M.C. 4751/2005 & CrI.M.A. No. 9626/2005

SMT. TARUNA BATRA .....PETITIONER  
Through S/Shri O.P. Wadhwa with  
Rajat Wadhwa and  
Rajneesh Kumar, Advocates.

versus

SMT. SHIKHA BATRA ....RESPONDENT  
Through Mr. Umesh Sharma with  
Mr. R.K. Sharma, Advocates.

CRL.M.C. 4752/2005 & CrI.M.A. Nos. 9628-29/2005

SMT. TARUNA BATRA .....PETITIONER  
Through S/Shri O.P. Wadhwa with  
Rajat Wadhwa and  
Rajneesh Kumar, Advocates.

versus

SMT. SHIKHA BATRA ....RESPONDENT  
Through Mr. Umesh Sharma with  
Mr. R.K. Sharma, Advocates.

CRL.M.C. 4754/2005 & CrI.M.A. No. 9630/2005

SMT. TARUNA BATRA ..... PETITIONER  
Through S/Shri O.P. Wadhwa with  
Rajat Wadhwa and  
Rajneesh Kumar, Advocates.

versus

SMT. SHIKHA BATRA ....RESPONDENT  
Through Mr. Umesh Sharma with  
Mr. R.K. Sharma, Advocates.

CRL.M.C. 4776/2005 & CrI.M.A. No. 9652/2005

SMT. TARUNA BATRA .....PETITIONER  
Through S/Shri O.P. Wadhwa with  
Rajat Wadhwa and  
Rajneesh Kumar, Advocates.

versus

SMT. SHIKHA BATRA ..... RESPONDENT  
Through Mr. Umesh Sharma with  
Mr. R.K. Sharma, Advocates.

**CORAM:**  
**HON'BLE DR. JUSTICE S. MURALIDHAR**

- |    |   |     |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not?                                | Yes |
| 3. | Whether the judgment should be reported in Digest?                    | Yes |

### **JUDGMENT**

**Dr. S. Muralidhar, J.**

1. These are four revision petitions filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking the quashing of Complaint Case Nos. 177/2003, 178/2003, 179/2003, 180/2003 titled "***Smt. Shikha Batra through her Husband/Attorney v. Smt. Taruna Batra***" and the summoning order dated 13<sup>th</sup> November, 2003 passed by the Metropolitan Magistrate ('MM'), New Delhi summoning the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('N.I. Act').

#### ***Background Facts***

2. The complainant Smt. Shikha Batra is the sister-in-law of the Petitioner Smt. Tarun Batra. In other words, Smt. Taruna Batra is the wife of the brother of Smt. Shikha Batra. The marriage took place on 14<sup>th</sup> April 2000 after which the Petitioner began residing in her matrimonial home. According to the Petitioner, soon after the marriage her husband got a bank account opened in her name in Canara Bank, Janpath Branch, New Delhi

and obtained her signatures on several blank cheques stating that he wanted to utilise them for business purposes. The Petitioner obliged by signing all those cheques.

3. It is averred in the petition that the Petitioner's husband and other family members, including the husband and sister-in-law Smt. Shikha Batra, the complainant in this case, are carrying on their business in the name of M/s Virtual Financial Services Pvt. Ltd. where they all are Directors. They are also Directors of M/s Vishwas Securities Pvt. Ltd., and certain other firms. The Petitioner was also one of the Directors of M/s Vishwas Securities Pvt. Ltd., which fact was not known to the Petitioner till a reply was filed by her husband to an application filed by her under Section 24 of the Hindu Marriage Act 1955.

4. According to the Petitioner, there was matrimonial discord and this culminated in proceedings before the Crime Against Women Cell (CAW) where a compromise was arrived between the parties on 24<sup>th</sup> May 2002. IN terms of the compromise, it was agreed that the Petitioner, her husband Shri Amit Batra and the child would live on the second floor of the property No. B-135, Phase-I, Ashok Vihar, and that the in-laws will reside on the ground and first floor. However this did not improve matters, and led to a FIR being registered on 10<sup>th</sup> January 2003 under Section 406/498-A/506 read with 34 Indian Penal Code (IPC) against the husband and the in-laws. On 11<sup>th</sup> January 2003, the husband and in-laws were arrested. It is stated that from 12<sup>th</sup> January 2003 onwards, the Petitioner was compelled

to return to her parents' house.

5. There were further proceedings seeking mandatory injunction in Suit No. 87/2003 filed by the Petitioner against her husband and in-laws in the Court of the Civil Judge, Delhi. An order was passed in that suit on 4<sup>th</sup> March 2003 directing both parties not to interfere with the possession of each other. This order was reversed by the judgment dated 17<sup>th</sup> September 2004 of the learned Senior Civil Judge, Delhi. The Petitioner then succeeded before this Court which by an order dated 17<sup>th</sup> January, 2005 restored the order dated 4<sup>th</sup> March, 2003 passed by the learned Civil Judge. However, the Respondent further took the matter in appeal to the Supreme Court where she apparently succeeded. This entire narration of facts is to show that the parties have been having continuing disputes against each other since January 2003.

6. It is stated that the Petitioner's husband had filed HMA Case No. 207/2002 which was dismissed for default on 26<sup>th</sup> March, 2004. The maintenance ordered by the learned Judge was not honoured by the Petitioner's husband. The respondent then further filed a criminal complaint against the Petitioner and her parents pursuant to which FIR No. 695/2003 was registered at Police Station Ashok Vihar for the offences under Section 380/447/447/506/34 IPC. This Court by an order dated 15<sup>th</sup> April 2004 stayed further criminal proceedings.

7. According to the Petitioner, when she did not receive any maintenance,

she had sought to withdraw money from her bank account. On examining the statement of account, it was revealed that a sum of Rs. 10 lakhs had been transferred from her account to that of M/s Virtual Financial Services Pvt. Ltd. The Petitioner then got issued a legal notice on 12<sup>th</sup> June 2003 to Virtual Financial Services Pvt. Ltd. and its Directors including her sister-in-law asking for return of the money. It is stated that after receipt of this notice, the Petitioner's husband filled up the four blank cheques which had earlier been signed by the petitioner, presented them to the Bank for clearance and got them dishonoured. The said four cheques were:

- (i) No. 996843 dated 16.06.2003 for a sum of Rs. 5 lakhs,
- (ii) No. 996844 dated 16.06.2003 for Rs.2,70,000/-
- (iii) No. 996845 dated 18.06.2003 for Rs. 5 lakhs and
- (iv) No. 996846 dated 18.06.2003 for Rs. 2,70,000/-

8. Claiming that the said four cheques were given by the Petitioner to the Respondent on account of loan allegedly given by the Respondent to the Petitioner and interest thereof a notice was issued on 25<sup>th</sup> June, 2003 to the Petitioner by the Respondent demanding payment of the principal and interest amounts. This was followed by the filing of the four criminal complaints referred to earlier, one for each dishonoured cheque, in which the impugned order dated 13<sup>th</sup> November, 2003 was passed by the MM, New Delhi summoning the petitioner for the offence under Section 138 NI Act.

### ***Submissions of Counsel***

9. The first submission of the learned counsel for the Petitioner is that the complaint itself was not maintainable since it has been presented through a

Power of Attorney and the complaint did not enclose a copy of the Power of Attorney. He submits that a complaint filed under Section 142 (a) NI Act for the offence under Section 138 NI Act could not have been filed through a Power of Attorney and in any event no cognizance could have been taken by the learned MM without a copy of the power of attorney being even produced along with the complaint. He places reliance upon the judgments of the Madras High Court in *M/s Ruby Leather Exports v. K. Venu Rep. Vandana Chemicals III 1994(1) CRIMES 820* and the Andhra Pradesh High Court in *M/s Swastic Coaters Pvt. Ltd. v. M/s Deepak Brothers 1997 CRI. L.J. 1942*.

10. Counsel for the Petitioner next submits that given the background of the disputes between the parties it is clear that the present complaint is malafide and as a counterblast to the case filed by the Petitioner against the Respondent under Section 498A/406/506 read with 34 IPC as well as the notice issued by her seeking the return of Rs.10 lakhs transferred from her account to that of M/s Virtual Financial Services Pvt. Ltd. He submits that upon reading the complaint as a whole it is plain that no case is made out for proceeding against the petitioner for the offence under Section 138 NI Act. He says that it is highly improbable in June 2000 the Petitioner had issued post-dated cheques dated 18<sup>th</sup> June 2003. It is even more improbable that they could have been issued on that very date when the parties were ranged against each other in civil and criminal disputes. He further says that filling up the date on a blank cheque and presenting it after the disputed between the parties had been going on and were pending, is a

purely malafide action and that the complaint should be quashed on this ground itself. He also points out that there is a willful suppression of material facts in the complaint and this constitutes a gross abuse of the process of law by the complainant.

11. The learned counsel for the complainant submits that as far as Section 138 NI Act is concerned, all that the MM was required to examine at the stage of issuing summons was whether the cheque was drawn by the Petitioner and was when presented dishonoured. He submits that the Petitioner does not dispute the fact that she had signed the cheques or that they were dishonoured on the ground of insufficient funds. This was enough to attract the offence under Section 138 NI Act and the learned MM cannot be faulted for issuing summons. He further submits that the parties had regular commercial transactions independent of the matrimonial relations. He refers to certain correspondence in the form of lawyer's notice which showed that during the subsistence of the matrimonial relations the parties had entered into business dealings. He accordingly submits that the complaint cannot, in this background, be said to be malafide. Relying on the judgments of the Supreme Court in *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* (2005) 1 SCC 122 and *Daljeet Singh Chandok (SH.) v. State* 2006 (1) DCR 635, he submits that disputed questions of fact, particularly in commercial transactions, cannot be gone into in a petition under Section 482 CrPC, and that the matter will have to be examined only at the trial.

12. As regards the complaint being filed through a Power of Attorney, the learned counsel for the respondent was unable to show whether such Power of Attorney was indeed filed along with the complaint. He was not able to produce a copy even before this Court. He is also unable to dispute the legal position as explained by the Madras High Court in *Ruby Leather Exports*.

### *Issues*

13. It requires to be explained that the facts that the four cheques in question were signed by the petitioner and when presented by the respondent to the bank for clearance were dishonoured are not in dispute. The contention of the petitioner however is that the complaint is still an abuse of the process of law in view of the background of the relationship between the parties. Therefore, on a consideration of the submissions of the counsel for the parties and the points of dispute, the following issues arise for determination by this Court:

- (a) Was the complaint filed by the Respondent Complainant under Section 142 (a) NI Act against the Petitioner for the offence under 138 NI Act maintainable inasmuch as it was filed through a power-of attorney of the complainant and could the learned MM have taken cognizance without a copy of such power of attorney being produced?
- (b) Independent of (a), is the complaint taken as a whole so improbable that no offence can be said to be made out against the petitioner for the offence under Section 138 NI Act?



(c) Does the complaint constitute an abuse of the process of law?

***Re: Issue (a)***

14. It is plain from a reading of the complaint that it has been filed by Smt. Shikha Batra through her power of attorney holder and husband Shri Amit Relhan. The documents appended to the complaint have been indicated at the end of the complaint as under:

**“List of Documents**

1. Cheque bearing No. 996846 in favour of the Complainant dated 18.06.2003 drawn on Canara Bank, Janpath, New Delhi, for a sum of Rs.2,70,000/-.
2. Bank Memo dated 18.06.2003.
3. Copy of notice dated 25.06.2003.
4. Postal receipts.
5. U.P.C. Slip.”

This clearly shows that the power of attorney was not filed along with the complaint. From the list of witnesses, it is seen that “complainant through attorney” is the first witness. The summoning order dated 13<sup>th</sup> November 2003 itself shows that at the time cognizance was taken and the summoning order issued, the complainant was absent and the application for exemption from the appearance of the complainant was allowed. The learned MM clearly did not apply his mind to the fact that the complaint had been filed through a power of attorney. He did not ask to see the power of attorney. In any event, the complainant through attorney was not even present.

15.1 In *Ruby Leather Exports*, the precise question that arose for

consideration by the Madras High Court is set out in para 15 of the judgment which reads as under:

“Can a Power of Attorney Agent or a person authorised in writing by the payee or the holder in due course of the cheque, be competent to make a complainant in writing under section 142(a) of the Negotiable Instruments Act to facilitate valid cognizance being taken by the Magistrate?”

15.2 After exhaustively discussing the case law including judgments of the Supreme Court, the Madras High Court answered the question in para 30 of the judgment in the affirmative in the following words (*Crimes* p.p.831-32):

“...a Power of Attorney Agent of the payee or the holder in due course of the cheque, will be competent to make a complaint in writing under Section 142 (a) of the NI Act, to facilitate valid cognizance being taken by the Magistrate. It makes no difference, if the Power of Attorney is executed by one individual in favour of another or executed by a company in favour of a particular person.”

The Madras High Court added that it would be open for the accused to assail the validity of the power of attorney in their defence during the trial.

15.3 However, the matter did not end there. The Madras High Court was dealing with a batch of cases where similar questions arose. In some cases filed through a power-of attorney, the copy of the power-of-attorney had been produced before the Magistrate at the time of taking cognizance. In some others the document was not so produced. This led to the further question whether the validity of the order taking cognizance would be

different in either situation.

15.4 In para 32 of the said judgment in *M/s Ruby Leather Exports* the Madras High Court was dealing with a case where the authorisation given by the complainant company to its representative was not produced before the Magistrate at the time of taking cognizance. The Court held that the **cognizance would be barred under Section 142 (a) NI Act**. In contrast in paras 34 and 36 where it was dealing with cases where the power of attorney was produced, the orders taking cognizance were upheld.

15.5 The resultant position is that the judgment of the Madras High Court *Ruby Leather Exports* holds that even where it is permissible for an individual payee to file a complaint under Section 142 (a) NI Act through a power of attorney, the learned Magistrate cannot validly take cognizance of the offence complained of unless the document constituting the power-of-attorney is produced at that time of taking cognizance.

16. In *Swastik Coaters Pvt. Ltd.*, it was similarly held by the Andhra Pradesh High Court that a complaint under Section 138 NI Act filed without producing the document authorising the complainant to file such complaint was not maintainable.

17. This Court is inclined to follow the dicta of the above two High Courts. It is accordingly held that a complaint under Section 142 (a) NI Act could be validly filed through a power of attorney holder of the complainant. It is

further held that the cognizance of the offence on such complaint can be validly taken by the learned MM only if the document constituting the power of attorney executed by the complainant is presented along with the complaint. Otherwise the order taking cognizance and issuing summons would be invalid. The learned MM before whom a complaint filed under Section 142 (a) NI Act through a power-of attorney is presented should, before taking cognizance and issuing summons, satisfy himself that such a power of attorney exists, and that it is a valid document executed in accordance with law. For instance, the Magistrate, if presented with a certified copy of the power of attorney, should also require the production of its original and satisfy himself about its genuineness before proceeding to issue summons. This will be the minimum safeguard for permitting criminal complaints under the NI Act to be filed under Section 142(a) NI Act through a power-of-attorney for an offence Section 138 thereof.

18. In the present case, admittedly the power of attorney was not filed along with the complaint and the impugned summoning order also does not indicate that the learned MM examined such document. For this reason alone, the summoning order cannot be sustained and is liable to be set aside. Issue (a) is answered accordingly.

***Re: Issue (b)***

19. Considering that lengthy arguments have been addressed touching on the criminal complaint, the Court proceeds to answer the next two issues as well. The scope of the powers and jurisdiction of this Court under Section

482 CrPC to interfere in criminal proceedings have been well settled. It is necessary only to refer to following passage in the judgment in *State of Haryana v. Bhajan Lal (1992) Supp 1 SCC 335 at 378*:

“(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.”

20. Keeping the above parameters in view, this Court proceeds to examine if the criminal complaints in the instant case calls for interference by this Court.

21. In the first place, it requires to be noticed that the complainant and the accused are related to each other. The complainant is the sister-in-law of the accused. There is no dispute about the fact that there has been a breakdown of relations between the petitioner and her husband and therefore between the petitioner and her sister-in-law, the Respondent herein, as well since May 2002. Numerous cases have been filed by the parties against each other since then. It is in this background that it requires to be examined whether it is conceivable that the accused could have issued the four cheques dated 18<sup>th</sup> June, 2003 to the complainant in the manner indicated and at a time as suggested by the complainant Respondent in the complaint.

22. It is apparent from a reading of the complaint that the four cheques were not issued on 18<sup>th</sup> June 2003. It is the complainant's case that these were post-dated cheques handed over by the Petitioner to the complainant sometime in June 2000. At that time, i.e. June 2000 it was hardly expected by either party that there would be bitter disputes between the parties within a period of two years. The paras 2, 3 and 4 of the complaint read as under:

“2. That because of the close relations with the Accused, the

Complainant made appropriate arrangements for the said loan and handed over a friendly loan to the Accused for the period of three years in the form of two cheques Nos. 525635 dated 07.06.2000 and cheque No. 525631 dated 17.06.2000 both for Rs.5 lacs each and were drawn on Andhra Bank, Vishwas Nagar, Shahdara, Delhi.

3. That the said loan was handed over to the Accused on the mutual agreement that along with the principal amount the Accused will adequately compensate the Complainant for utilising her said amount. In this regard the Accused issued two post dated cheques of Rs. 2,70,000/- each to compensate the Complainant two post dated cheques of Rs. 5 lacs each towards the principle amount in the name of the Complainant. At the time of issuing the said cheques the Accused assured the Complainant that the same shall be encashed on presentation on the requisite dates.

4. That the Complainant presented the cheque bearing No. 996846 dated 18.06.2003 for a sum of Rs. 2,70,000/- (Rupees Two Lac Seventy Thousand only) drawn on Canara Bank, Janpath, New Delhi with her bankers Canara Bank, Parliament Street, New Delhi but the said cheque was returned unpaid by the bankers of the Accused for the reasons “INSUFFICIENT FUNDS” vide their bank memo dated 18.06.2003 and the same was informed to the Complainant by its bankers which fact was immediately brought to the knowledge of the Accused.”

23. As against the above version, we have the Petitioner's version where she says that the husband of the Petitioner took her signature on the blank cheques some time in June 2000. The only admitted portion in the two conflicting versions is that the Petitioner indeed signed the cheques and when presented for payment they were dishonoured. But for a person to issue cheques in June 2000 which are post-dated three years beyond the date on which they are signed and for sums of money which are not easily explained, seems highly improbable given the relationship between the parties at that time and thereafter. The story of a loan being given to the Petitioner by the Respondent "on mutual agreement" becomes less and less probable when the complaint is examined as a whole. If the complainant were to be believed, it would mean that the Petitioner here had agreed that she would pay a sum of Rs. 2,70,000/- as interest for a loan of Rs. 5 lakhs at the end of three years. This works out to simple interest at 18% p.a for three years. The version of the complainant that the parties were in an independent business relationship is improbable and there is really no material to evidence this at all. It seems hardly probable that a business person would enter into such a transaction by accepting post-dated cheques beyond three years without even a written agreement or security as collateral and somehow expect that they would in fact be honoured when presented.

24. Given the bitter relationship between the parties this much is clear that there was no occasion for the Petitioner here to issue the four cheques on 18<sup>th</sup> June, 2003. So either they were dated as such in June 2000 itself or



they were simply given as blank cheques. The former version for the reasons already explained appears to be inherently absurd and improbable. If on the other hand they were blank cheques, then the filling up of those cheques with dates of 18<sup>th</sup> June 2003 when the signatory of the cheque was in a full-fledged litigation with the payee is certainly an unpardonable act of tampering with the material document and making it appear as if the cheques was drawn at a time when the drawer knew that if presented the cheque would be dishonoured. Given the background of the litigation between the parties, it is absurd to suggest that the drawer of the cheque, i.e. the petitioner here, would have intended to make any payment at all to the respondent much less such huge sums as represented by the four cheques on 18<sup>th</sup> June 2003. Filling up a blank cheque with a date three years after it was first signed, and to suit the complainant's convenience for the purposes of filing a criminal complaint for an offence under Section 138 NI Act indeed would show that the complaint has been instituted maliciously. However, even if one were to go entirely by the complainant's version the complaint is fraught with apparent improbabilities.

25. A careful consideration of the materials on record persuades this Court to conclude that, even if the complainant's version on the issuance of the cheques were to be accepted then at least one of the parameters identified in the judgment in *Bhajan Lal* viz., that the allegations made in the 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" is attracted. This is a ground on

which the complaint is liable to be quashed. Issue (b) is answered accordingly.

***Re: Issue (c)***

26. The timing of the filing of the complaint, and it being a counterblast to the matrimonial discord between the parties cannot be discounted. Interestingly, the complaint is solely based on the issuance of the four cheques and their presentation. The background of the other proceedings pending in the criminal courts and the civil courts between the parties is not even adverted to. This is a wilful suppression of facts in the complaint which doubtless has a bearing on the bonafides of the complaint itself and therefore cannot be condoned. Even while the learned MM cannot be expected to be on guard against such willful suppression of facts, this Court can certainly, in exercise of its powers under Section 482 CrPC interfere to prevent such misuse of the process of law when the fact of such abuse comes to its notice.

27. Also, this Court finds that the complaint has not approached the criminal court with clean hands and the complaint itself is an abuse of the process of law. This is yet another ground warranting interference by this Court under Section 482 CrPC. The Court is conscious that the power to quash criminal proceedings must be exercised sparingly and only in rare cases. This is certainly in the category of a rare case in which the Court finds it necessary to interfere to quash the criminal proceedings.

28. For all the aforementioned reasons, this Court quashes Complaint Case Nos. 177/2003, 178/2003, 179/2003, 180/2003 titled “***Smt. Shikha Batra through her Husband/Attorney v. Smt. Taruna Batra***”, the summoning order dated 13<sup>th</sup> November, 2003 passed by the MM, New Delhi and all proceedings consequent thereto.

29. The petitions are allowed with costs of Rs.5,000 each which will be paid by the Respondent to the Petitioner within a period of four weeks. The pending applications are disposed of.

30<sup>th</sup> January, 2008  
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(S.Muralidhar)  
Judge