

Criminal Revision No.995/2002

30.11.2011

I have heard the learned counsel for the applicant.

This revision has been filed against the order framing charges under sections 420/468 IPC. The allegation against the accused-applicant is that he gave a cheque, despite the fact that his bank did not have sufficient money to honour that cheque. Thereby the accused-applicant induced the victims namely Ramchander, Gendalal and Ramdeen to deliver valuable property ie. wheat worth Rs.60,000/-, Rs.80,000/- and Rs.21,000/- respectively.

Thus, the alleged offence of cheating consists of the allegation that a fraudulent representation was made that the cheque would be cashed upon presentation, which is normally implied when a cheque is issued to another person. And on the basis of that false representation, valuable property was delivered by the victims to the accused.

Learned counsel for the applicant submitted that because the offence would be covered by Section 138 of the Negotiable Instruments Act, therefore the applicant cannot be prosecuted under Section 420 IPC. The argument is misconceived. If an offence of cheating is made out, it is not relevant whether the act which was committed also amounts to an offence under another Statute. Besides that, for proceeding under Section 138 of the Negotiable Instruments Act certain procedural formalities are required to be fulfilled by the victim, namely giving notice and filing of the complaint within time.

If both the offences are made out, it would be the choice of the complainant for which of the offences he wants to prosecute the accused, or to prosecute the accused for both.

Learned counsel for the applicant has submitted that the money covered by the dishonoured cheques has been paid. For this he has relied on paragraph 7 of the memorandum of revision. The

avermments made in that paragraph are vague and it does not specify that the amount has been paid. Further, the receipts mentioned in paragraph 7 have not been enclosed, although mentioned as enclosed.

Learned counsel for the revisionist has shown me the photocopies of those receipts. They have been signed by someone called Bhanwar Singh who is not the victim. Further the amount of those receipts are only Rs.3000/-, Rs.4000/-, Rs.12000/- and Rs.16000/- respectively. Therefore, this amount prima facie does not cover the amount of which the victims have been cheated. Besides, whether these receipts are genuine or not, is a question of fact and cannot be considered in this revision, because this defence version will be required to be proved before the trial Court.

There is no force in this revision. It is accordingly dismissed. The interim order, because of which proceeding has been stayed since 2002, is vacated.

(Sushil Harkauli)
Acting Chief Justice

ac./AK