

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No.246 of 2007

Ram Bahadur Singh Petitioner
Versus
1. The State of Jharkhand
2. Shivnath Singh Opposite Parties

CORAM: HON'BLE MR. JUSTICE H.C. MISHRA

For the Petitioner : Mr. S. Thakur
For the State : Mr. Dardhu Mahto, A. P.P.

7/30.11.2012 Heard learned counsel for the petitioner and learned counsel for the State.

2. Petitioner is aggrieved by the order dated 15.2.2007 passed by the learned S.D.J.M., Bokaro, in C.P. Case No.125 of 1998 / Tr. No.26 of 2007, whereby the Court below has dismissed the application under Section 245 of the Cr.P.C., filed by the petitioner for discharge, directing the petitioner to appear for framing the charge for the offence under Section 420 of the I.P.C. and 138 of the N.I. Act.

3. The complainant O.P. No.2 filed a complaint case in the Court of the Chief Judicial Magistrate, Bokaro at Chas, which was registered as C.P. Case No. 125/1998. In the said complaint petition it was alleged that the petitioner took a friendly loan from the complainant. Though the petitioner demanded Rs 3,00,000/- as loan from the complainant, but the complainant could give Rs 2,05,000/- to the petitioner as loan. When the money was demanded back, the same was not returned back and ultimately, the petitioner issued a cheque for Rs.2,05,000/- bearing No.160517 dated 15.11.1997, drawn up upon United Bank of India, B.S. City Branch in favour of the complainant. The said cheque, when produced in the Bank, bounced. After giving due notice to the petitioner, the complaint petition was filed. The complainant supported his case in his statement recorded on solemn affirmation and two witnesses were also examined in the enquiry stage, on the basis of which, the *prima facie* offence was found against the petitioner under Section 420 of the I.P.C. and 138 of the N.I. Act and process was issued against the petitioner. After appearance of the petitioner some witnesses were examined before charge. The petitioner subsequently filed his application for discharge, which was rejected by the Court below.

4. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, in as much as, the loan allegedly taken by the petitioner was a friendly loan and there is no allegation of any intention to deceive the complainant at the time of advancement of the loan. Accordingly, no offence can be said to be made out against the petitioner under Section 420 of the IPC. It has also been submitted that filing of the complaint petition with regard to Section 138 of the N.I. Act is barred by limitation, in as much as, the complaint petition would show that the cheque had bounced on 26.3.1998, thereafter, the notice to the petitioner was given through registered

post on 7.4.1998 and the complaint petition was filed on 12.5.1998. It is submitted that it is nowhere mentioned as to when the notice was received by the petitioner and accordingly, the date of sending the notice would be deemed to be date of receiving the notice and after the expiry of the period of one month thereafter, the complaint petition was filed.

5. Learned counsel placed reliance upon the decision of this Court in **Kumar Ranjeev and Ors. Vs. State of Jharkhand and Anr.**, reported in 2012 (4) East Cr C 9 (Jhr), wherein where, the complainant had given the friendly loan of Rs.1,00,000/- to the accused and at the time of taking loan, a post dated cheque was given by the accused, which ultimately bounced, it was found by the Court that the very first element of deception constituting an offence of cheating was completely lacking in the case and as such no offence can be said to be made out against the accused under Section 418 of the IPC. Learned counsel has also placed reliance upon the decision of the Supreme Court of India in **Md. Ibrahim and Ors. Vs. State of Bihar and Anr.**, reported in 2009 (4) East Cr C 6 (SC), wherein, the supreme Court has discussed the ingredients of the offence of cheating and has held that to constitute the offence under Section 420 of the I.P.C., there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived to deliver any property to any person or ought to make, alter or destroy wholly or in part a valuable security, or anything signed or sealed and which is capable of being converted into valuable security. Placing reliance on these decisions, learned counsel for the petitioner has submitted that the impugned order cannot be sustained in the eyes of law.

6. Learned counsel for the State on the other hand has submitted that on the basis of the allegations made in the complaint petition and the statements of the complainant and the witnesses examined at the enquiry stage, the offence is clearly made out against the petitioner.

7. Having heard learned counsels for both the sides and upon going through the record, I find that in the complaint petition, which has been brought on record as Annexure-1 to this application, it is clearly alleged, that the cheque was handed over to the complainant by the petitioner, not at the time of taking the loan, rather the same was handed over to the complainant after several requests/approaches to the accused to return the money, and it is stated in the complaint petition in paragraph-12 as follows:-

“12. The accused having full knowledge that he has no money in his account signed the cheque to the complainant with intention to cheat the complainant, thus accused is also liable to be prosecuted U/s. 138 of the N.I. Act and 420 IPC.

8. Thus, from the statements made in the complaint petition, it is apparent that there is specific allegation that the cheque was issued by the petitioner only after several requests/approaches to the accused to return the money and that too

having full knowledge that no money was there in the account of the petitioner and accordingly, it is alleged that the offence had also been made out under section 420 of the I.P.C. The facts of this case are quite different from the facts of the case in **Kumar Ranjeev's** case (supra), in as much as, in the said case, the post dated cheque was issued at the time of giving the friendly loan itself, whereas in the present case, there is direct allegation that the said cheque was issued only after several requests/approaches to the accused to return the money and that too having full knowledge that no money was there in the account of the petitioner and in order to deceive the complainant. Accordingly, at this stage it cannot be said that at the time of taking the loan, and/or at the time of giving the cheque, there was no element of deception constituting an offence of cheating. As such the decisions cited by the learned counsel are of no help to the petitioner.

9. I do not find any merit even in the submission of the learned counsel for the petitioner that the complaint petition as regards Section 138 of the N.I. Act is barred by limitation. In the present case the notice was sent to the petitioner within time and the complaint petition was also preferred within time after the cause of action accruing to the complainant.

10. In the facts of this case, I find that on the basis of the allegations made in the complaint petition as also on the basis of the statements of the complainant and witnesses, the offence is made out against the petitioner and there is no illegality and/or irregularity in the impugned order worth interference in the revision jurisdiction. There is no merit in this application and the same is hereby, dismissed. Let the Lower Court Record be sent back forthwith.

(H. C. Mishra, J)

R.Kumar