

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT SRINAGAR**

CRMC No. 13/2018

IA No. 01/2018

Date of Order: **31.08.2018.**

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Pardeep Rajapan

Vs.

Obaid Javeed Bhat

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**Coram:**

**Hon'ble Mr Justice M. K. Hanjura, Judge**

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**Appearance:**

For petitioner(s): Mr M.S. Latief, Advocate

For respondent(s): Mr Mushtaq Ahmad, Advocate

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i/	Whether to be reported in Press/Media?	Yes/No
ii/	Whether to be reported in Digest/Journal?	Yes/No

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1. In this petition, filed under Section 561-A of the Code of Criminal Procedure, the petitioner has craved the indulgence of this Court in quashing the order dated 30.08.2017, passed by the Ld. Judicial Magistrate Ist Class (Sub-Registrar), Srinagar and the quashment of the complaint titled **Obaid Javeed v. Pardeep Rajapan**, is as well implored for.

2. The case set up by the petitioner is that the respondent is engaged in the retail business of handicrafts. He is running a firm under the name and style of "Heritage Art exposition" at Kerala. In order to expand the business activities, the petitioner and the respondent entered into a written agreement dated 31.12.2015, duly executed by them at Kerala. The respondent flouted the terms and conditions of the agreement, which required the cancellation of the

agreement. However, the respondent filed a complaint against him before the Court of the learned Judicial Magistrate Ist Class (Sub-Registrar) Srinagar. The learned Judicial Magistrate Ist Class (Sub-Registrar), Srinagar, vide his order dated 03.04.2017 referred the matter to SHO Police Station, Saddar, Srinagar, for investigation. By another order dated 30.08.2017, the petitioner was summoned to appear before the court. It is also stated that the complaint filed by the complainant is false, frivolous and a poly devised to cause harassment to the petitioner, when on the face of it, the dispute between the parties involves a civil transaction. Therefore, the continuance of such criminal proceedings amounts to the abuse of the process of law and these deserve to be quashed. It is also stated that the petitioner has not committed any offence and *prima facie* the allegations made in the complaint do not constitute a criminal offence and the remedy for the redressal of the grievances lies elsewhere.

3. Before adverting to the merits of the controversy it will be of essence to give a resume of the contents of the complaint filed by the respondent against the petitioner. It is stated in the complaint that the complainant delivered the stocks to the accused and all the payments had to be made upto six months from the date of the agreement and in case of any outstanding amount due to the complainant after 01.09.2016, the accused had to pay 4% interest per month on the outstanding amount. The accused after the quality check and verification of market price of the products entered into a contract with the

complainant for the purchase of the products collectively priced at Rs. 61,98,063/- (Rupees sixty one lac ninety eight thousand and sixty three) with the condition that he shall immediately make the payments to the complainant as he had to invest the said amount in another business. The complainant insisted for cash payment but the accused issued post dated cheques in favour of the complaint's firm. The complainant and the accused made an agreement on 31 December 2015 whereby the accused purchased the stock of the complainant's firm. The stock consisted of Kurtis, Copper Handicrafts, Wooden letters holders, Jewel Carpets, Fibre, Chain stitch items, Home furnishing, Marble artifacts, Stoles, Jewellery, wooden artifacts, various other art and handicraft items including showroom installations like air conditioners, Furniture, Carpets, Electric Lights, Chandeliers, Decorative items. The accused agreed to pay the amount due to the complainant by cheques detailed in the complaint. He also agreed to pay 4% interest per month on the outstanding amount till payment. The accused made a payment of Rs.25,00,000 ( Twenty five lac) in cash on being insisted by the complainant and did not pay the remainder though he had cash in his hand. He had the intention to dupe and deprive the complainant of the outstanding amount as also to cheat him. The accused with the evil intention to take all the stock of the complainants firm issued the post dated cheques which the accused knew would be dishonored and the complainant would be left to face a miserable life by stripping him off all the investments and capital. When the complainant

presented the cheques for payment before the bank, the complainant was left in awe as the cheques were dishonored for the insufficiency of funds. Before the complainant could proceed as per the procedure laid down in Section 138 of the Negotiable Instruments Act, the State of J&K witnessed unrest and violence as a result of which the time period for taking action under section 138 elapsed. The complainant sent a notice dated 30.01.2017 to the accused to pay the amount due against the cheques dishonored but the accused instead of making the payments threatened the complainant with dire consequences.

4. Heard and considered.

5. The law is that Section 561-A Cr. PC envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give an effect to an order under the code (ii) to prevent abuse of process of Court and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have the inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. Courts are invested with all such powers as are necessary to do right and to undo a wrong in the course of administration of justice on the principle of *Quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa esse non potest* (When the law gives the person anything, it gives him that without which it cannot exist).

6. In the law laid down by the Supreme Court in the case of *State of Haryana and others v. Bhajan Lal and others*, reported in *1992 Supp (1) SCC 335*, the Supreme Court has elaborately considered the scope of Section 482 Cr. P.C. In this case the Supreme Court had the occasion to determine the power of the High Court to quash the entire criminal proceeding including the FIR. The case under scrutiny arose out of an FIR registered under Sections 161, 165 IPC and Section 5(2) of the Prevention of Corruption Act, 1947. After noticing the earlier pronouncements on the subject, the Supreme Court detailed with lace certain categories of cases by way of illustration where power under Section 482 of the Cr. P.C. can be exercised to prevent the abuse of the process of the Court or secure the ends of justice. Paragraph 102 of the judgment provides seven categories of cases where the provisions of Section 482 Cr. P.C. can be invoked and these are extracted below:

*“i) 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.*

*ii) 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.*

*iii) 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.*

*iv) 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 any order of a Magistrate as contemplated under Section 155(2) of the Code.*

*v) 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.*

*vi) 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.*

*vii) 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.”*

7. Testing the instant case on the standards of the law laid down above which are illustrative and not exhaustive what requires to be looked into at the first blush is whether the allegations made in the complaint even if they are taken at their face value and accepted in their entirety do prima facie constitute any offence or make out a case against the Petitioner. The accusation leveled against the petitioner as is repeated and reiterated here is that he has committed an offence under section 420 of Ranbir Panel Code. Section 420 of the Ranbir Panel Code provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Cheating is defined by section 415 of RPC which imparts that Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything

which he would not do or omit if he were not so deceived, and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “Cheat”.

8. It is settled law, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making the promise or representation. On a failure to keep up the promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is also trite in law that failure to keep up the promise subsequently, cannot bring the mischief of the accused within the definition of section 420 RPC. In order to establish the offence of cheating the complainant is required to show and indicate that the accused had fraudulent and dishonest intention at the time of making the promise or representation.
9. Looking at the instant case from the above perspective a bare reading of the complaint, reveals that the present case falls within the purview and category of cases where the complaint discloses no offence even if the allegations contained in it are taken to be true on their face value. It is so because the case set up by the petitioner, which is admitted by the respondents, is that the respondent was engaged in the retail business of handicrafts and in order to expand the horizons of their business, the

petitioner and the respondent entered into a written Agreement dated 31-12-2015, duly executed at Kerala which provides and postulates as under:

***“This Agreement is made on this the Thirty first day of December, 2015***

***BETWEEN***

***UBAID JAVEED BHAT*** S/O Javeed Bhat, aged 25 years, now residing at TC 43/952(6), N.H. Bypass Road, Paruthikuzhi, Manacaud P.P., Thiruvananthapuram, PIN : 695009 and permanently residing at H-18 Sector 3, Gulberg Colony, Hyderpora, Srinagar, Kashmir, Jammu and Kashmir (hereinafter referred to as the First Party)

***AND***

***PRADEEP***, S/O Krishna Panicker Rajappan, aged 39 years, residing at T.C. 46/203, Puthuval Puthen Veedu, Paruthikuzhy, Poonthura, Thiruvananthapuram, Pin 695026 (hereinafter referred to as the Second Party)

*WHEREAS the first party is the proprietor of Heritage Art Exposition and is doing business at T.C 46/296/7, N.H. Bypass Road, Pallitheruvu, Poonthura P.O Thiruvananthapuram, Pin 695026.*

*WHEREAS the first party has decided to wind up his business and the second party who is the proprietor of Kerala Spices and Handicrafts, TC, 43/836 (3,4) Paruthikuzhy, Bypass Road, Thiruvananthapuram, 695026 has approached the First Party to purchase the stock remaining with the First Party and the First Party has agreed to sell the stock to the Second party.*

***NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:***

- The second party has purchased the stock from the first party as per the bills mentioned below :*

<u>Bill No .</u>	<u>Amount</u>	<u>Date</u>
01	36,21,890.30	31-12-2015
02	14,43,410.00	31-12-2015
03	79,348.00	31-12-2015
04	10,53,415.00	31-12-2015
<b><u>Total</u></b>	<b><u>61,98,063.30</u></b>	



2. The second party acknowledge the receipt of the articles from the first party in good condition.

3. The second party is satisfied with the price of the articles and has received the entire articles from the first party on credit. The second party has issued the following post dated cheques towards the payment of the amount due to the first party.

<u>Cheque No.</u>	<u>Amount</u>	<u>Date</u>
4342243	5,00,000	15-01-2016
434244	5,00,000	01-02-2016
434245	5,00,000	15-02-2016
434246	5,00,000	25-02-2016
434247	5,00,000	01-03-2016
434248	5,00,000	15-03-2016
434249	5,00,000	25-03-2016
434250	5,00,000	01-04-2016
434251	5,00,000	15-04-2016
434252	5,00,000	25-04-2016
434253	5,00,000	01-05-2016
434255	1,98,063	15-05-2016
434264	5,00,000	01-09-2016
<u>Total</u>	<u>61,98,063</u>	

4. The second party has agreed to pay the amount to the first party according to the cheques mentioned above and the first party shall present the cheques on the respective dates in his bank for collection.

5. The second party agree to clear the liability towards the first party as payments made by the cheques mentioned above and in case any outstanding amount is due to the first party after 01-09-2016, then the second party agree to pay 4% interest per month on the outstanding amount till payment.

6. *In case if any of the above cheques are dishonored, then the first party shall at liberty to initiate legal proceedings against the second party.*

7. *The courts in Jammu and Kashmir shall have jurisdiction with respect to any dispute with regard to this agreement.*

8. *The address of any notice to the parties to this agreement shall be as mentioned above.*

9. *The original agreement shall be kept by the first party and the copy shall be given to the second party duly signed and executed by the first party.*

10. *Both parties have understood the contents of the documents in respective languages and thereafter signed this agreement.*

*IN WITNESS WHERE of the parties have signed this agreement on the date mentioned above in presence of the following.*

*Sd/*

*First party*

*Sd/*

*Second party.*

*Sd/*

*02 WITNESSES"*

**10.** From a mere reading of the Agreement supra, what can be seen from a naked eye is that the allegations contained in the complaint do not constitute any criminal offence but it is a case involving civil transaction wherein initiation of a criminal prosecution will be a sheer abuse of the process of the Court. The reading of the complaint demonstrates refusal of payment, which the respondent had to receive from the accused. Resort can, in this behalf, be had to the law laid down in the case of *Triloke Singh and others versus Satya Deo Tripathi*, reported in 1979 SLJ (NOSC) ; 1, wherein the Supreme Court has held that where there is a bona fide dispute between the parties, which led to the seizure of the truck,

criminal proceedings deserve to be quashed. The said case was in respect of a vehicle between the purchaser and the financier for breach of conditions which were contained in an agreement. Again in Ghulam-Mohi-ud-Din Mir versus. Abdul Karim Trambee reported in 1979 SLJ: 81, a single Judge of this court has held that where there was breach of conditions of agreement in respect of payment of consideration money, criminal prosecution would not lie and the criminal prosecution, in almost in identical circumstances, were quashed.

**11.** Applying the ratio of the law laid down above to the facts and circumstances of this case what is gathered further from the complaint is that the complainant – respondent, and the accused – Petitioner, had entered into a bargain in respect of sale of the stock/articles of the respondent – proprietor of Heritage Art Exposition, Palitheruvu, Poonthura, Kerala, consisting of Kurtis, Copper Handicrafts, Wooden Letter Holders, Jewel Carpets, Fiber, Chain Stitch items, Home furnishing, Marble Artifacts, Stoles, Jewelry etc. on the terms and conditions laid down in the Agreement. Consideration was fixed and a part thereof was paid to the respondent by the petitioner. The Agreement also stipulated, detailed and delineated the consequences that would follow in the case of the breach of any condition. The complaint raises a dispute, which is purely of a civil nature and it specifically details that the Agreement executed between the petitioner and the respondent defined their rights and obligations and the consequent fall out of the breach of the obligations, if any committed.

12. Viewed in the context of what has been said and done above, the petition of the petitioner is allowed as a corollary to which the order dated 30/08.2018 passed by the Ld. Judicial Magistrate Ist Class (Sub-Registrar), Srinagar, in case titled **Obaid Javeed v. Pardeep Rajapan**, is quashed along with all other proceedings emanating there from.

13. Disposed of along with connected MP (s).

( **M. K. Hanjura** )  
**Judge**

**SRINAGAR**  
**31.08.2018**  
"Manzoor"

