THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.3633/2017
Shastri Builders through Proprietor Vs. M/s. Peetambara Elivators Through Properietor

Gwalior, Dated :28/01/2019

Shri Anil Kumar Mishra and Shri Gaurav Mishra, Advocates for applicant.

None for respondent.

This application under Section 482 of Cr.P.C. has been filed for quashing the order dated 7/1/2015 passed by the trial court, thereby taking cognizance of offence against the applicant under Section 138 of the Negotiable Instruments Act.

It is submitted by the counsel for the applicant that the respondent has filed a complaint under Section 138 of the Negotiable Instruments Act on the allegation that the applicant had issued a cheque no.14948 amounting to Rs.32,37,800/-, which stood bounced, and in spite of the statutory notice given by the respondent, the applicant has not repaid the cheque amount.

It appears that the trial court after considering the allegations made in the complaint as well as considering the affidavit and the documents filed alongwith the complaint, took cognizance of the offence under Section 138 of the Negotiable Instruments Act by order dated 7/1/2015.

Challenging the order of the trial court, it is submitted by the counsel for the applicant that one blank signed cheque

belonging to the applicant was misplaced in the year 2010 and accordingly, on 15/12/2010 a police complaint was made. Later on, on 6/3/2012 an application was also given to the bank for stopping payment of the cheque, in case if it is presented. It is further submitted that the bank had discontinued the old cheques and had introduced new cheques with the validity of three months. It is the case of the respondent that the applicant had issued a cheque dated 31/3/2013 in favour of the respondent amount to Rs.32,37,800/-. It is submitted that by that time, the old cheques were already discontinued and thus, it is clear that the old cheque, which was misplaced in the year 2010, has been misused by the respondent and thus, the complaint filed by the respondent is liable to be quashed. It is further submitted that as the applicant had filed certain complaints against respondent-Mukesh Tripathi and, therefore, by way of counterblast, a false case has been concocted by misusing the cheque, which was misplaced by the applicant in the year 2010 itself.

Considered the submissions made by the counsel for the applicant.

Before considering the submissions made by the counsel for the applicant, it would be necessary to consider the scope

of powers under Section 482 of Cr.P.C.

The Supreme Court in the case of **Padal Venkata Rama Reddy Vs. Koveuri Satyanarayana Reddy** reported in **(2011) 12 SCC 437** has held as under:

> **"8.** Section 482 of the Code deals with inherent power of the High Court. It is under Chapter 37 of the Code titled "Miscellaneous" which reads as under:
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> "**482.** *Saving of inherent powers of High Court*.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."
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> This section* was added by the Code of Criminal Procedure (Amendment) Act of 1923 as the High Courts were unable to render complete justice even if in a given case the illegality was palpable and apparent. This section envisages three circumstances in which the inherent jurisdiction may be exercised, namely:
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> *1*. to give effect to any order under CrPC,
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> *2*. to prevent abuse of the process of any court,
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> *3*. to secure the ends of justice.
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> **9.** In *R.P. Kapur* v. *State of Punjab AIR 1960 SC 866* this Court laid down the following principles:
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> (*i*) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(*ii*) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

(*iii*) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(*iv*) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

10. In *State of Karnataka* v. *L. Muniswamy (1977) 2 SCC 699* this Court has held as under: (SCC p. 703, para 7)

"*7*. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the

provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under

Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita* v. *State 2000 Cri LJ 315* and *B.S. Joshi* v. *State of Haryana (2003) 4 SCC 675*). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi* v. *R. Prasanna Kumar 1990 Supp SCC 686*; *Ganesh Narayan Hegde* v. *S. Bangarappa (1995) 4 SCC 41* and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque (2005) 1 SCC 122*.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions

of this Court vide *State of Haryana* v. *Bhajan Lal 1992 Supp (1) SCC 335*, *Janata Dal* v. *H.S. Chowdhary (1992) 4 SCC 305*, *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill (1995) 6 SCC 194* and *Indian Oil Corpn.* v. *NEPC India Ltd. (2006) 6 SCC 736*.

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18. In *State of Orissa* v. *Saroj Kumar Sahoo (2005) 13 SCC 540* it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCC p. 550, para 11)

"*11*. … It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

19. In *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692* this Court held as under: (SCC p. 695, para 7)

"*7*. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the

court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692*, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao case (1988) 1 SCC 692* was reconsidered and explained by this Court in *State of Bihar* v. *P.P. Sharma 1992 Supp (1) SCC 222* which reads as under: (SCC p. 271, para 70)

"*70. Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692* also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this

> Court interfered and allowed the appeal. … Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."
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> **22.** Thus, the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal".

The Supreme Court in the case of **State of Orissa v. Ujjal Kumar Burdhan** reported in **(2012) 4 SCC 547** has held

as under :

> **"8.** It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.
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> **9.** In *State of W.B.* v. *Swapan Kumar Guha*, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)
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> "*65. … An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large*. Justice requires that a

person who commits an offence has to be brought to book and must be punished for the same. *If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed*. …

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. … *If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence*."

(emphasis supplied)

10. On a similar issue under consideration, in *Jeffrey J. Diermeier* v. *State of W.B.*[4], while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)

"*20*. … The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code; (*ii*) to prevent abuse of the process of court; and (*iii*) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not

> unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

The Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora,** reported in **(2013) 10 SCC 581** has held as under :

> **"30.** It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein."

The Supreme Court in the case of **Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors.** reported in **AIR 1976 SC 1947** has held as under:-

> "6. …..... The High Court appears to have gone into the whole history of the case, examined the merits of the evidence, the contradictions and what it called the improbabilities and after a detailed discussion not only of the materials produced before the Magistrate but also of the documents which had been filed by the defence and which should not have been looked into at the stage when the matter was pending under Section 202, has held that the order of the Magistrate was illegal and was fit to be quashed.....
> 7. For these reasons, therefore, we are satisfied that the order of the High Court suffers from a serious legal infirmity and the High Court has exceeded its jurisdiction in interfering in revision by quashing the order of the Magistrate. We, therefore, allow the appeal, set aside the order of the High Court dated December 16, 1975 and restore the order of the Magistrate issuing process against respondents No.1 and 2."

Thus, it is clear that when the entire allegations are accepted on their face value and if they do not disclose the commission of offence, only then this Court in exercise of powers under Section 482 of Cr.P.C. can quash the proceedings. It is well established principle of law that the legitimate prosecution should not be stiffled in the mid way and this Court while exercising powers under Section 482 of Cr.P.C. cannot consider the defence of the accused persons.

The applicant has filed the present petition on the ground that the cheque, which is the subject matter of the complaint,

was misplaced in the year 2010 and accordingly, the police report was also made on 15/12/2010 and an application was made to the bank on 6/3/2012 for stopping payment of the said cheque, in case if it is presented. The counsel for the applicant could not specify as to why number of the cheque was not mentioned in the complaint, which was made to the police on 15/12/2010 and why the applicant kept quite and filed an application for stopping the payment before the bank only on 6/3/2012, i.e. after more than one year and three months from the date of misplacing cheque in question. Further, the counsel for the applicant also could not point out as to why the Proprietor of the applicant-company had signed the blank cheque. These are certain questions, which are required to be adjudicated apart from other questions which may arise during the trial. As this Court cannot adjudicate upon the disputed questions of facts, therefore, this Court is of the considered opinion that the defence put-forth by the applicant cannot be considered at this stage and it shall be open for the applicant to raise all possible defences, which may be available to him in the trial.

It is next contended by the counsel for the applicant that the trial court did not record the statement of the complainant

under Section 200 of Cr.P.C. and only by relying upon the affidavit filed by the complainant, has taken cognizance of the offence against the applicant and thus the order taking cognizance is bad in law.

The submission made by the counsel for the applicant is no more res integra.

The Supreme Court in the case of **K.S. Joseph Vs. Philips Carbon Black Ltd. and another** reported in **(2016) 11 SCC 105** has held as under:-

> **"3.** So far as the issue of examination of the complainant on solemn affirmation under Section 200 CrPC is concerned, the submissions are misconceived on account of Section 145 of the Act which was inserted along with some other sections through an amendment in the year 2002 w.e.f. 6-2-2003. Section 145 of the Act is as follows :
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> "***145. Evidence on affidavit***. -(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.
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> (2) The court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."
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> **4**. The non obstante clause in sub-section (1) of Section 145 is self-explanatory and overrules the requirement of examination of the complainant on solemn affirmation

under Section 200 CrPC. Now the complainant is entitled to give his evidence on affidavit and subject to all just exceptions, the same has to be read in evidence in any enquiry, trial or other proceeding under CrPC. This view is also supported by the judgment of this Court in *Mandvi Coop. Bank Ltd. v. Nimesh B. Thakore*. No doubt this judgment was in a different factual scenario but this Court went into details of the amendment of 2002 including Section 145 and in para 18 it also noted the Statement of Objects and Reasons appended to the Amendment Bill. Inter alia, the Objects included

> "to prescribe procedure for dispensing with preliminary evidence of the complainant" (SCC p.92)

5. In view of discussion made above, the plea based on Section 200 CrPC is rejected as untenable. The other plea relating to delay of 62 days and taking of cognizance without issuing notice to dispense with such delay is however found to have substance. The relevant provision under Section 142 of the Act requires making of the complaint within one month of cause of action arising on account of non-compliance with the demand in the notice to make payment within 15 days. According to the appellant the notice was dated 3-2-2006 alleging non-payment of two cheques each for Rs.1,80,000/-. Allegedly the appellant had sent a reply denying his liability through a reply dated 20-2-2006. The complaint was filed on 24-5-2006. Prima facie, in view of aforesaid dates the complaint was beyond the permissible period. No doubt the Court has been empowered to take cognizance even after the prescribed period but only if the complainant satisfies the Court that he had sufficient cause for not making the complaint within the prescribed period."

Thus, it is clear that the procedure adopted by the Trial

Magistrate in taking cognizance of the offence on the basis of affidavit of the complainant is in consonance with the provisions of Section 145 of Negotiable Instruments Act. Accordingly, the plea based on Section 200 of Cr.P.C. is rejected being devoid of merits.

Resultantly, the application filed by the applicant is hereby **dismissed** being devoid of merits and misconceived.

(G.S. Ahluwalia)
Judge

Arun*