

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 23rd OF JUNE, 2023

MISC. CRIMINAL CASE No. 37462 of 2022

BETWEEN:-

SANJAY KUMAR S/O SHRI BHAGCHAND DANJAY, AGED 54 YEARS, OCCUPATION: RETIRED R/O 106, SANJAY GANDHI COLONY, DR. AMBEDKAR NAGAR MHOW DISTRICT INDORE (MADHYA PRADESH)

.....APPLICANT

(BY SHRI SHANTANU NAIK - ADVOCATE)

AND

1. VASUDEV S/O RAMGOPAL YADAV, AGED 53 YEARS, OCCUPATION: SECRETARY R/O SARDAR PATEL NAGAR, SARKARI SCHOOL KE PAS, DR. AMBEDKAR MHOW DISTRICT INDORE (MADHYA PRADESH)

2. NAVEEN S/O JAGDISH PAWAR, AGED 51 YEARS, OCCUPATION: LEKHAPAL R/O MALI SAMAJ KI DHARMSHALA KE PAS TELI KHEDA DR. AMBEDKAR NAGAR MHOW DISTRICT INDORE (MADHYA PRADESH)

.....RESPONDENTS

(NONE PRESENT FOR THE RESPONDENTS)

This application coming on for hearing this day, the court passed the following:

ORDER

This petition has been filed under Section (*hereinafter as u/S*) 482 of the Code Of Criminal Procedure, 1973 (*hereinafter as Cr.P.C*) being aggrieved by the order dated 01.07.2022 in unregistered complaint case No.45/2021 passed by Judicial Magistrate First Class, Dr. Ambedkar Nagar, Distt. Indore (M.P.), whereby the learned trial Court has rejected the application u/S 91 and 202 of Cr.P.C, filed by the petitioner/complainant.

2. According to the case, the petitioner/complainant has filed a private complaint u/S 200 of Cr.P.C against the respondents/accused persons for the offence punishable u/S 420, 467, 468, 471, 408, 409 and 120-B of the Indian Penal Code, 1860 (*hereinafter as IPC*) contending that the petitioner being the chairman of *Infantry School Vetan Bhogi Sahkari Sankh Sanstha (hereinafter as Institution)* took a loan of Rs.4,00,000/- on 07.07.2015 and had issued a signed and blank cheque (cheque No.119270) in favour of the institution as a loan security. The respondent No.1 and respondent No.2 are chairman and accountant of institution respectively. The respondents, without the consent of the petitioner/complainant misused their power, committed forgery of the aforesaid cheque and illegally withdrew Rs.34,650/- from the bank account of the petitioner and deposited in the account of the institution. Thereafter, on 07.07.2016, the respondents deposited Rs.12,900/- in loan account of the petitioner and remaining amount Rs.7,850/-, Rs.7,750/- and Rs.7,650/- was illegally deposited in the account of Suresh, Ashok Kumar and Sachin Sharma. Thereby, the respondents

have misused the aforesaid cheque and have illegally received the aforesaid amount.

3. The petitioner filed an application (Annexure P-9) u/S 91 and 202 of Cr.P.C to produce aforementioned cheque and concerning bank statement from manager/authorized officers of Indore Premium Cooperative bank, Branch Mhow, Ambedkar Nagar and to examine handwriting of the cheque from the handwriting expert.

4. Learned trial Court considering provision of Section 20 of the Negotiable Instrument Act, 1881 has rejected the application.

5. Learned counsel for the petitioner submits that the complaint is based on the aforesaid cheque and the cheque is in possession of Indore Premium Cooperative bank, Branch Mhow, Ambedkar Nagar. Therefore, the production of the cheque is the most essential element of the case, but the trial Court without considering Section 91 and Section 202 of Cr.P.C has rejected the application. Therefore, impugned order is perverse and is also against the settled principle of law.

6. I have heard learned counsel for the petitioner and perused the record.

7. For deciding the issue, in the present case, it is apposite to reproduce here Sections 91 and 202 of Cr.P.C which run as under:-

“91. Summons to produce document or other thing.—
(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for

the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

202. Postponement of issue of process.— *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1 [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a*

police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”

8. Bare reading of the aforementioned provisions, it is reflected that the Court is empowered to call any documents u/S 91 of Cr.P.C, which are necessary to fair proceeding of the case. The Court can issue summons to the persons in whose possession the desirable documents are kept. The powers which have been given to the Court u/S 91 of Cr.P.C is discretionary in nature and same can be exercised judiciously

and in proper manner. It also shows that the power to issue summon for the production of a document are a thing is to be exercised whenever the Court considers that its production is necessary or desirable for the purpose of investigation, inquiry, trial or other proceeding.

9. In the case of ***Shivjee Singh V Nagendra Tiwari And Ors.*** [order dated 06.07.2010, passed in Criminal Appeal No.1158/2010], Hon'ble the Supreme Court has opined in Paragraph 8 as under:-

“8. The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process. Section 202 empowers the Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 203, the Magistrate can dismiss the complaint if, after taking into consideration the statements of the complainant and his witnesses and the result of the inquiry/investigation, if any, done under Section 202, he is of the view that there does not exist sufficient ground for proceeding. On the other hand, Section 204 provides for issue of process if the Magistrate is satisfied that there is sufficient ground

for doing so. The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI of Cr.P.C. finds adequate support from the judgments of this Court in R.C. Ruia v. State of Bombay, 1958 SCR 618, Vadilal Panchal v. Duttatraya Dulaji Ghadigaonkar (1961) 1 SCR 1, Chandra Deo Singh v. Prokash Chandra Bose (1964) 1 SCR 639, Nirmaljit Singh Hoon v. State of West Bengal (1973) 3 SCC 753, Kewal Krishan v. Suraj Bhan (1980) Supp SCC 499, Mohinder Singh v. Gulwant Singh (1992) 2 SCC 213 and Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC 492."

10. Therefore, it is clear from Section 202(1) Cr.P.C., subject to the exception mentioned u/S 202(1)(a) and (b), if the magistrate postpone the issue of process against the accused he may himself inquire into the case or and direct an investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.

11. It appears from the impugned order that the trial Court has not considered the aforementioned provision of law while deciding the application (Annexure P-9) and passing the impugned order. It also appears that the trial Court has considered only Section 20 of the Negotiable Instrument Act, 1881 and rejected the application (Annexure

P-9), therefore, it is apparent that the trial Court has failed to exercise its power judiciously as provided u/S 91 and 202 of Cr.P.C and has erred by rejecting the application. Therefore, the impugned order is perverse in law and is not sustainable.

12. Resultantly, the petition is **allowed** and impugned order dated 01.07.2022 passed by the trial Court is set aside. The trial Court is directed to re-hear the petitioner on the application (Annexure P-9) and decide it in accordance with the law.

(PRAKASH CHANDRA GUPTA)
JUDGE

Shruti