

(2002) 08 JH CK 0024

Jharkhand High Court

Case No: Criminal Miscellaneous Petition No. 230 of 2002

Jasmin B. Shah (A)

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: Aug. 13, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2003) 1 BC 327 : (2003) CriLJ 621

Hon'ble Judges: D.N. Prasad, J

Bench: Single Bench

Advocate: Kalyan Roy and Ashok Kumar, for the Appellant; APP and S.L. Agrawal, for the O.P. No. 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Deoki Nandan Prasad, J.

The petitioner filed this application praying therein to quash the entire criminal proceedings in connection with Sakchi P.S. Case No. 50 of 2001 which was registered under Sections 406/420, IPC and Section 138 of the Negotiable Instrument Act.

2. The prosecution case as alleged is that the complainant is the broker of Indo Shares & Pin Trade Ltd., Mumbai who is the member of Mumbai Stock Exchange and he was dealing in shares on line trading of shares by the G. Set (Computer Bolt) provided by Mumbai Stock Exchange after depositing the security with the accused company. Due to some reasons membership of accused company was terminated by the Stock Exchange which compelled the complainant to file a claim of Rs. 5,56,555.70 before the Arbitration Committee Stock Exchange, Mumbai being Ref. No. 105 of 2000. A compromise was arrived at in between the parties and the accused Company agreed to settle the matter on payment of total sum of Rs.

4,58,894.07 ps. The accused-Company issued five post dated cheques on different dates in favour of the complainant which was bounced with remark "fund insufficient". Thereafter, the complainant issued legal notice to the accused for payment of the amount but the same has not been paid. Accordingly, the FIR was lodged.

3. The learned counsel appearing on behalf of the petitioner submitted that no case under Sections 406/420, IPC made out as well as the complainant failed to furnish cash security of Rupees ten lakhs with the petitioner against bad delivery which was the condition precedent as per settlement held before the Arbitration. It is also submitted that later on he said security amount was increased for furnishing of Rs. 50 lakhs but the complainant failed to furnish the security amount and as such there is no laches on the part of the petitioner for complying of the said order as well as the whole transaction is of civil nature and as such Sections 406/420, IPC is not made out.

4. On the other hand, the learned counsel appearing on behalf of the opposite party contended before me that admittedly, the petitioner issued five past dated cheques on different dates amounting to Rs. 4,58,894.07 ps. in terms of full and final settlement arrived at before the Arbitration proceeding and that amount could not be paid because of insufficient fund in the bank concerned resulting the petitioner-Company cheated the complainant and knowingly such mischief was done. It is also submitted that the petitioner was in full knowledge and even then the five post dated cheque was issued and, therefore, the petitioner has committed cheating and the FIR has been lodged rightly against the petitioner and others as well as the matter is also under investigation and in another complaint case, cognizance was already taken for the offence u/s 138 of the Negotiable Instrument Act.

5. Obviously, both parties were in business term from before as well as the petitioner also admitted to had issued five post dated cheques amounting to Rs. 4,58,894.07 ps. even the petitioner had full knowledge that no such money is lying in the account of the petitioner. Moreover, the matter is still under investigation in this respect and the charge-sheet has not yet been submitted.

6. Having regard to the above facts and circumstances, I do not find any reason to interfere with the FIR at this initial stage. Thus, this application is dismissed.