* IN THE HIGH COURT OF DELHI AT NEW DELHI

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\# **CNR No. DLHC010003032023**

\+ **CRL.M.C. 130/2023**

RAJ KUMAR SHARMA .....Petitioner

Through: Mr. Gurvinder Singh, Adv.

versus

OM PRAKASH SINGH & ORS. .....Respondents

Through: Mr. Mahipal Singh, Adv. for R1 & R2.
Mr. Manoj Kumar, Adv. for R3 *(through VC)*

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') assails the order dated 03.12.2021 passed by the learned Additional Sessions Judge-08 (West), Tis Hazari Courts, Delhi in ***Criminal Revision No. 409/2019*** titled "***Raj Kumar Sharma v. Om Prakash Singh & Ors..***" By the impugned order, the learned ASJ dismissed the revision preferred against the order dated 21.09.2019 passed by the learned Metropolitan Magistrate-03 (West), Tis Hazari Courts, Delhi, whereby the complaint filed by the Petitioner was dismissed and issuance of process against the Respondents was declined.

2. The complaint arises from a transaction for purchase of a hydraulic machine by the Petitioner from Respondent Nos. 1 and 2. The Petitioner seeks

setting aside of the aforesaid orders and issuance of process against the Respondents for offences punishable under Section 420 read with Sections 120B and 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

FACTUAL MATRIX

3. The Petitioner is the proprietor of M/s Imperial Shovel Works. Respondent Nos. 1 and 2, namely, Om Prakash Singh and Rishal Singh, are partners of M/s Parrytech Hydraulics. Respondent No. 3 is Ms. Neetu Gupta, with whom, according to the Petitioner, he had no independent dealings and whom he did not know at the relevant time.

4. The Petitioner's case is that on 05.12.2010, he entered into a transaction with Respondent Nos. 1 and 2 for purchase of a hydraulic machine for a total consideration of Rs. 16,80,000/-. A sum of Rs. 5,15,000/- was to be paid as advance consideration through a cheque drawn on the account of the Petitioner's wife, Ms. Maya Mishra. According to the Petitioner, Respondent Nos. 1 and 2 specifically required that the name of the payee be left blank and explained that the amount was to be paid to a third person in connection with their business dealings.

5. Cheque bearing No. 129041 dated 08.12.2010 for Rs.5,15,000/- was accordingly handed over without the name of the payee being filled in. On 15.12.2010, the amount was credited to the account of Respondent No. 3. The Petitioner states that when he questioned Respondent Nos. 1 and 2 in this regard, he was informed that Respondent No. 3 had business dealings with them and that the payment had been routed to her on their account.

6. The hydraulic machine was subsequently delivered to the Petitioner.

The dispute arose thereafter when Respondent Nos. 1 and 2 allegedly denied having received or adjusted the sum of Rs. 5,15,000/- towards the sale consideration and demanded further payment. The Petitioner treats this subsequent denial as constituting cheating on the part of the Respondents.

7. The Petitioner thereafter approached the police and subsequently instituted a complaint before the learned MM along with an application under Section 156(3) CrPC. By order dated 04.07.2014, the application under Section 156(3) CrPC was dismissed. The Petitioner was, however, permitted to lead pre-summoning evidence.

8. The Petitioner examined himself as CW-1; his wife, Ms. Maya Mishra, as CW-2; Mr. Mukesh, his erstwhile employee, as CW-3; and Mr. Sushil Tandon, Manager, Citibank, as CW-4. CW-1 deposed regarding the purchase transaction, handing over of the cheque of Rs. 5,15,000/- to Respondent Nos. 1 and 2, credit of the amount into the account of Respondent No. 3 and the subsequent denial regarding adjustment of the said amount. He also stated that the hydraulic machine had been delivered to him.

9. CW-2 supported the Petitioner's version regarding the manner in which the cheque was handed over and the explanation furnished by Respondent Nos. 1 and 2 for leaving the name of the payee blank. She further stated that when the credit into the account of Respondent No. 3 came to their notice, Respondent Nos. 1 and 2 stated that Respondent No. 3 had business dealings with them. CW-3 also supported the handing over of the cheque in the course of the transaction. CW-4 produced the relevant banking records, including the cheque, loan documents and the account statement of Ms. Maya Mishra.

10. Upon considering the complaint and the pre-summoning evidence, the learned MM, by order dated 21.09.2019, found no sufficient ground to

proceed against the Respondents and dismissed the complaint. The Petitioner challenged the said order by way of ***Criminal Revision No. 409/2019***.

11. By the impugned order dated 03.12.2021, the learned ASJ dismissed the revision. The learned ASJ noticed that the transaction for purchase of the hydraulic machine had culminated in delivery of the machine to the Petitioner and that the dispute thereafter concerned the assertion of Respondent Nos. 1 and 2 that the entire consideration had not been received. Finding no illegality or infirmity in the order of the learned MM, the learned ASJ declined interference.

12. Aggrieved by the dismissal of the revision petition, the Petitioner has approached this Court by way of the present petition under Section 482 CrPC.

SUBMISSIONS BY THE PETITIONER

13. Learned counsel for the Petitioner submits that the learned MM failed to consider the pre-summoning evidence of CW-1 to CW-4, which, according to the Petitioner, furnished sufficient grounds for issuance of process against the Respondents.

14. Learned counsel submits that the subsequent denial by Respondent Nos. 1 and 2 of the payment of Rs. 5,15,000/-, despite the cheque having been handed over at their instance and credited to Respondent No. 3, *prima facie* disclosed cheating and dishonest inducement. It is urged that the oral evidence of CW-1 to CW-3, read with the banking record proved through CW-4, was sufficient at the pre-summoning stage and was not properly appreciated by either of the Courts below.

15. Learned counsel further assails the order of the learned MM on the ground of non-application of mind. It is pointed out that the certified copy of

the order and the digitally signed version uploaded on the e-Courts website contain materially different reasoning. Learned counsel particularly assails the reference to non-examination of an independent witness/valuer concerning the hydraulic machine, contending that the complaint did not concern any defect in the machine. It is further pointed out that one of the versions refers to proceedings under Section 138 of the Negotiable Instruments Act, 1881, which, according to the Petitioner, were never instituted. It is submitted that these discrepancies were specifically raised in revision but were not dealt with by the learned ASJ.

16. Learned counsel submits that the learned ASJ erred in treating the controversy merely as a monetary dispute without examining whether the material led by the Petitioner disclosed sufficient grounds for proceeding under Section 204 CrPC. The Petitioner, therefore, seeks setting aside of the orders passed by the learned MM and the learned ASJ and issuance of process against the Respondents.

SUBMISSIONS ON BEHALF OF RESPONDENTS

17. *Per contra*, learned counsel for Respondent Nos.1 and 2 submits that the dispute is civil and monetary in nature and does not disclose any criminal offence. Reliance is placed upon the Action Taken Report ('ATR') noticed by the learned MM, which, according to the Respondents, disclosed a different version concerning the payment made to Respondent No. 3. It is further submitted that the material led by the Petitioner did not dislodge the findings recorded in the said enquiry.

18. Learned counsel further submits that the Petitioner had not produced complete documentary material to establish the payments claimed to have

been made towards the machine. It is contended that the controversy essentially concerns the balance sale consideration and cannot be converted into a prosecution for cheating.

19. Learned counsel for Respondent Nos. 1 and 2 also refers to civil proceedings arising out of the transaction and submits that the dispute concerning the outstanding sale consideration has already been adjudicated by the Civil Court. It is, therefore, urged that the controversy is essentially monetary in nature and does not warrant interference with the orders passed by the learned MM and the learned ASJ.

FINDINGS AND ANALYSIS

20. This Court has heard learned counsel for the parties and has perused the record.

21. The question which arises is whether the material placed by the Petitioner at the pre-summoning stage disclosed sufficient grounds for proceeding against the Respondents for the offences alleged and, consequently, whether the concurrent orders of the learned MM and the learned ASJ warrant interference under Section 482 CrPC.

22. At the outset, the scope of the present proceedings must be kept in view. The order of the learned MM declining issuance of process has already been subjected to revisional scrutiny by the learned ASJ. In ***Manohar Singh v. Pradeep Mehta & Anr., 2024:DHC:157***, this Court while dealing with a similar challenge to dismissal of a complaint after pre-summoning evidence and dismissal of the revision thereagainst, observed that:

> *"12. Furthermore, the statutory bar, as contained in Section 397(3) of the Cr.P.C, on the maintainability of the second Revision Petition, cannot be circumvented by the petitioner by*

invoking jurisdiction of this Court under Section 482 of the Cr.P.C.. Reference in this regard may be made to the judgment of the Supreme Court in ***Rajan Kumar Manchanda v. State of Karnataka****, 1990 Supp. SCC 132."*

23. Thus, the jurisdiction under Section 482 CrPC cannot be invoked to secure another round of revisional appreciation of the same material. In any event, even upon an independent examination of the Petitioner's case, this Court finds no ground to interfere.

24. The principles governing issuance of process in a private complaint have been reiterated by the Supreme Court in ***Delhi Race Club (1940) Ltd. & Ors. v. State of Uttar Pradesh & Anr., 2024 INSC 626***. The Supreme Court held that, at the stage of issuance of process, the enquiry is whether sufficient grounds exist for proceeding further and not whether the accused would ultimately be convicted. At the same time, where the complaint and the evidence led in support thereof do not disclose the essential ingredients of the offence alleged, the complaint is liable to be dismissed at that stage itself.

25. The Supreme Court further emphasised that summoning an accused is a serious matter and cannot follow mechanically upon the filing of a complaint or examination of witnesses. The Magistrate is required to scrutinise the allegations and the supporting material to determine whether sufficient grounds exist for proceeding against the accused.

26. Insofar as the offence under Section 420 IPC is concerned, ***Delhi Race Club (supra)*** reiterates that deception and fraudulent or dishonest inducement are essential ingredients. More importantly, the dishonest intention must exist from the inception of the transaction. The Supreme Court observed that:

"30. Mere breach of contract cannot give rise to a criminal

> *prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence."*

27. The same principle has been reiterated recently in ***V. Ganesan v. State Rep. by the Sub Inspector of Police & Anr., 2026 INSC 265***. The Supreme Court held that the intention to deceive must exist when the inducement is made and that a subsequent failure to honour a promise cannot, by itself, justify a presumption that dishonest intention existed from the beginning. The nature of the underlying transaction and the attending circumstances were also held to be relevant while examining the existence of such intention.

28. It is in the light of the above principles that the Petitioner's case requires examination. The allegation concerning the cheque of Rs. 5,15,000/- cannot be viewed in isolation from the circumstances in which, according to the Petitioner himself, it was handed over. His case is that Respondent Nos. 1 and 2 asked that the name of the payee be left blank because the amount was required to be paid to a third person in connection with their business dealings. The cheque was thereafter credited to the account of Respondent No. 3. When the Petitioner questioned Respondent Nos. 1 and 2, they reiterated that Respondent No. 3 had business dealings with them.

29. Thus, the credit of the cheque into the account of Respondent No. 3 was not, on the Petitioner's own showing, contrary to the representation made when the cheque was obtained. What is alleged to have occurred subsequently is that Respondent Nos. 1 and 2 denied treating the amount of Rs.5,15,000/- as part of the consideration and demanded further payment. The material placed at the pre-summoning stage does not indicate that, at the time the

cheque was obtained, the representation regarding payment to a third person was false or was made with a preconceived dishonest intention.

30. The subsequent performance of the principal transaction is also material. In his pre-summoning deposition, the Petitioner himself acknowledged that the hydraulic machine had been delivered to him. Delivery of the machine is not, by itself, conclusive of the absence of criminality. It is, however, a relevant circumstance while examining whether Respondent Nos.1 and 2 had entered into the transaction with dishonest intention from the outset. In ***V. Ganesan (supra)***, the Supreme Court similarly treated performance of the principal purpose underlying the transaction as a material circumstance while examining whether the original promise was dishonest.

31. The pre-summoning evidence does not bridge this gap. CW-1 to CW-3 support the Petitioner's version regarding the handing over of the cheque and the circumstances surrounding the transaction, while CW-4 proves the relevant banking records. While this material establishes the movement of Rs.5,15,000/- from the account of the Petitioner's wife to the account of Respondent No.3, it does not disclose dishonest intention on the part of Respondent Nos.1 and 2 at the time the cheque was obtained.

32. The subsequent denial of adjustment of the amount may constitute the basis of a monetary dispute between the parties. A later dispute as to whether a particular payment is to be adjusted towards the sale consideration cannot, without material indicating deception at inception, retrospectively supply the *mens rea* required for an offence under Section 420 IPC. It is this distinction between a contractual dispute and the offence of cheating which ***Delhi Race Club (supra)*** and ***V. Ganesan (supra)*** emphasise.

33. In this context, this Court does not consider it necessary to place

determinative reliance upon the ATR referred to by the learned MM. The Petitioner's case can be tested on the complaint and the evidence led by him. Even if the Petitioner's version is accepted at its face value, the essential ingredient of fraudulent or dishonest intention at the inception of the transaction is not disclosed.

34. The same applies to the civil proceedings relied upon by Respondent Nos. 1 and 2. The present petition need not be decided on the basis of those proceedings. The complaint must stand or fall on whether its allegations and the material produced in support thereof disclose the ingredients of the offences alleged. For the reasons recorded above, they do not.

35. The Petitioner’s objection concerning the two versions of the order passed by the learned MM also requires consideration. The record placed with the petition contains the certified copy as well as the digitally signed copy downloaded from the e-Courts website, and the Petitioner contends that the reasoning contained therein is materially different. The Petitioner has also specifically assailed the reference to non-examination of an independent witness/valuer as unrelated to the allegation in the complaint and has disputed the reference in one version to proceedings under Section 138 of the NI Act.

36. These aspects, however, do not alter the outcome. The complaint was not founded upon any defect in the hydraulic machine and, therefore, the absence of a valuer has no bearing on the allegation of cheating. Equally, this Court does not rely upon any alleged proceedings under Section 138 of the NI Act. Even if these portions of the reasoning of the learned MM are kept entirely aside, the complaint and the pre-summoning evidence do not disclose dishonest intention at inception so as to justify issuance of process for the offence under Section 420 IPC.

37. The material on record, therefore, does not disclose sufficient grounds for proceeding against the Respondents for the offence of cheating. The subsequent dispute concerning adjustment of the payment of Rs. 5,15,000/- cannot, in the absence of material showing deception at inception, convert the underlying transaction into a criminal offence.

38. This Court, however, does not consider it necessary to endorse the observations of the learned ASJ describing the litigation as "frivolous" or commenting upon the Petitioner having wasted judicial time. Those observations were unnecessary for determination of the revision. The dismissal of the present petition rests solely upon the absence of sufficient material disclosing the essential ingredients of the criminal offences alleged.

39. The allegation under Section 120B IPC also rests upon the same transaction. Beyond the assertion that the Respondents acted in connivance, no material has been shown which *prima facie* indicates an agreement amongst them to cheat the Petitioner. In the absence of material disclosing the underlying offence of cheating or an agreement to commit the same, Section 120B IPC does not carry the Petitioner's case further. Section 34 IPC likewise cannot independently sustain issuance of process in the absence of a *prima facie* criminal act attracting the substantive offence alleged.

CONCLUSION

40. Accordingly, this Court finds no ground to interfere with the order dated 21.09.2019 passed by the learned MM declining issuance of process or the order dated 03.12.2021 passed by the learned ASJ in revision. The present petition seeks a further re-appreciation of the same pre-summoning material after the order of the learned MM has already undergone revisional scrutiny.

Neither the scope of interference under Section 482 CrPC nor the ingredients of the offences alleged warrant exercise of the inherent jurisdiction of this Court.

41. The petition is, accordingly, dismissed. Pending application(s), if any, also stand disposed of.

42. The observations herein are confined to the present criminal proceedings and shall not affect any civil rights or claims of the parties.

MADHU JAIN
(JUDGE)

AUGUST 24, 2026/m