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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 1281/2010 & CRL.M.A. 5219/2010

KAMAL NARAIN KAPOOR & ANR Petitioners

Through: Mr. S.S. Gandhi, Senior Advocate with
Mr. Dveep Ahuja, Advocate for
petitioner No.1.
Mr. Deepak Anand Masih, Advocate for
petitioner No.2.

versus

STATE & ANR Respondents

Through: Mr. Manoj Ohri, APP for State with
SI Manvendra Singh, PS Sarojini Nagar,
New Delhi.
Mr. A.K. Srivastava, Advocate with
Ms. Anita Kapoor, Advocate for
respondent No.2.

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Date of Decision: 29th November, 2012

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

J U D G M E N T

MANMOHAN, J (ORAL):

1. Present petition has been filed under Section 482 Cr.P.C. seeking setting aside of the order dated 05th March, 2010 passed by the Additional

Sessions Judge, New Delhi whereby the Metropolitan Magistrate's order dated 27th January, 2009 discharging the petitioners under Section 420/406 IPC was set aside.

2. On the last date of hearing, Mr. S.S. Gandhi, learned Senior Counsel had argued the matter extensively on behalf of the petitioners. In fact, after the respondents had concluded their arguments and certain queries had been raised by this Court, Mr. Gandhi, learned senior counsel had sought time to obtain instructions. Accordingly, the matter was adjourned for today.

3. Today, after some arguments, Mr. S.S. Gandhi, learned senior counsel wishes to withdraw the present petition.

4. At this stage, Mr. Deepak Anand Masih, learned counsel states that he is appearing on behalf of petitioner No.2 and he has instructions to press the present petition. He has today in Court handed over his written submissions. The same are taken on record. To obviate any delay in the matter, petition is taken up for hearing qua petitioner No.2. Consequently, qua petitioner No.1, present petition is dismissed as withdrawn.

5. The FIR filed in the present instance is reproduced below:-

*“12. FIR contents (Attach separate sheet, if required).
25th February, 2004. The SHO, Sarojini Nagar, New Delhi,
Dear Sir,
Re: - Complaint against M/s. Uma Shankar Kamal Narain
Jewellers, Chandni Chowk, Delhi. It is humbly stated that I am
an 80 years old man who has been defrauded by M/s. Uma
Shankar Kamal Narain, 1267, Chandni Chowk, Delhi. It is
stated that I had given them a loan of Rs.15,00,000/- (Rupees
Fifteen Lacs Only) vide cheque No. 357225 dated 5.8.1999
drawn on Central Bank of India, Safdarjung Enclave, New
Delhi and advance of Rs.5,50,000/- (Rupees Five Lacs & Fifty
thousand only) in cash. The said amount was interest bearing
@12% and was refundable within a year. The abovenamed*

party issued the following cheques with details hereunder to me as part refund of my dues: - Date of cheque 6.1.2000, 6.2.2000, 6.3.2000, 6.4.2000, 6.5.2000, 6.6.2000, 6.7.2000, 6.8.2000, 6.9.2000, 6.10.2000, 6.11.2000. Cheque No. 631258, 631259, 631260, 631261, 631262, 631263, 631264, 631265, 631266, 631267 and 631268 drawn on Union Bank of India, S.B. Saraffa Market, Chandni Chowk, Delhi. Amount – 1,50,000/-, 1,50,000/-, 1,50,000/-, 1,50,000/-, 1,50,000/-, 1,50,000/-, 1,50,000/-, 1,50,000/-, 1,50,000/-. Total Rs.16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only). On due dates of cheques I approached the party for encashment of cheques, however, they requested me to hold the cheques for some more time. Due to continuous follow up the said party issued me four cheques of Rs.25,000/- (Rupees Twenty Five Thousand) each in 2002 and 2003. I had been continuously following up with them for my repayment and visiting their shop regularly, recently I had fallen ill and only telephonic conversation showing my inability to come to their shop, both Shri Kamal Narain and Naresh Kapoor came to my residence at A-1/25, Safdarjung Enclave, New Delhi on 16.2.2004 at 2 pm in white Maruti car bearing No. 5565 and took the cheques mentioned above issued to me earlier on the promise that they will replace all the cheques with the fresh ones and for the balance a pay order in my favour will be handed over to me in full and final settlement of account tomorrow. I waited for them on 17th February, 2004 and finally I had to ring them up number of times to which they have been avoiding. After waiting continuously for 5 -6 days and failure to contact them, I have realized that they have fraudulently managed to get the cheques from me to avoid legal action from my side. As on date, total dues recoverable from M/s. Uma Shankar Kamal Narayan is approx Rs.30,00,000/- (Rupees Thirty Lac only) which includes principal amount and interest accrued. I most humbly request you to take necessary action against the owners of the firm M/s. Uma Shankar Kamal Narayan namely Shri Kamal Narayan & Shri Naresh Kapoor and help me to recover my dues. Thanking you, Yours faithfully, Sd/- English – Prem Nath Khanna – A – 1/25, Safdarjung Enclave, New Delhi Formerly

General Secretary Chandni Chowk Sarafa Association. Tel. No. 26106204. As per the enquiry conducted by the Vigilance/ S.W. District on the complaint an offence under section 406/420 IPC is made out. The FIR is registered under the above said section and handed for investigation to me. Sd/- English – SI Mukesh dated 1.5.2004. “

6. The Additional Sessions Judge while allowing the revision petition of respondent No.2-complainant as well as the State has observed as under:-

“4.5 Valuable Security” has been defined in Section 30 IPC, which reads as under:

“30. “Valuable security” – The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.”

5.0 The “dishonestly” and “fraudulently” have also been defined in Sections 24 and 25, respectively, which are reproduced hereunder:

“24. “Dishonestly” – Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

25. “Fraudulently” – A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”

5.1 The question is whether cheques in the present case can be termed as “Valuable Security”, even after the expiry of six months. Original cheques were in the possession of the complainant, at least he had an important document in his

possession whereby the opposite party has acknowledged its liability. As far as dishonest or fraudulent intention is concerned, it is a settled proposition that at this stage the complainant is not required to spell it out explicitly. In **Shivanarayan Kabra Vs. The State of Madras**, AIR 1967 SC 986, it was inter alia held that for offence under Section 420, accused need not make false pretence in express words and same may be inferred from all circumstances including conduct of accused in obtaining property.

Further, in **Rajesh Bajaj Vs. State NCT of Delhi and Others**, (1999) 3 SCC 259, it was inter alia held that – “It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage.”

5.2 The complainant has specifically stated that the cheques were taken away by him from the accused persons with a dishonest intention. They never intended to issue back any cheque to avoid any illegal action from his side. The filing of complaint u/S. 138 Negotiable Instruments Act, 1881 or institution of any criminal action is only one of the remedy available with the complainant in such cases. Such persons can also file suit for recovery and institute any proceedings for recovery of such amount. In such case, the cheques may be an important property in possession of the complainant. The fact that whether the same have been taken by the respondents or not and what was the intention of the respondents at that time, is a matter of trial. At the stage of charge, the court cannot jump to any conclusion. In any criminal case, there can be some flavor of civil transaction always. However, the duty of the court is to find out meticulously that whether the incident does not attract any offence at all.

In Rajesh Bajaj's case (Supra), it was also held that – “...It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transaction.”

6.0 I consider that at the stage of charge giving such a conclusive finding, by the ld. trial court, is erroneous.

*7.0 In view of the above findings, **revision petition is allowed.***

*Petitioner is directed to appear before the trial court on **22.03.2010 at 2 pm.**”*

7. Mr. Deepak Anand Masih submits that the whole prosecution story is a mixture of deceptions, intrigue, faulty investigation, lies and is hit by the statutory presumptions. According to him, the collective strength of all the evidence available on record is ‘nil’ and does not warrant a trial. He relies upon Section 114 of the Indian Evidence Act, 1872 to contend that only an ‘insane person’ would return the cheques before his claim was finally settled.

8. Mr. Masih further submits that there is nothing on record to qualify the alleged photocopies of cheques in question even as secondary evidence. In this connection he relies upon Section 65(c) of the Indian Evidence Act, 1872.

9. Mr. Masih, contends that the present complaint is actuated by the personal vengeance. He states that there was a marriage proposal from the complainant for his nephew to the daughter of petitioner No.1 and after the talks collapsed, present complaint was filed to settle personal scores.

10. Mr. Masih also contends that the present matter is a case of random and faulty investigation. He states that the Investigating Officer failed to take into account that petitioner No.2 had no legal link with M/s. Uma Shankar Kamal Narayan. He states that just because petitioner No.2 was the younger brother of petitioner No.1, he had been arrayed as an accused.

11. Mr. Masih lastly submits that a purely civil matter has been converted into a criminal case. In this connection, he relies upon the judgments of the Supreme Court in *G. Sagar Suri & Anr. Vs. State of U.P. & Ors., (2000) 2 SCC 636* and *M/s. Indian Oil Corporation Vs. M/s. NEPC India Ltd. & Ors., (2006) 6 SCC 736*.

12. Mr. Masih submits that petitioner No.2's fundamental right to speedy trial has been infringed in the present case as the FIR had been registered eight years ago. He also points out that one of the important witnesses has, in the meantime, expired and therefore, no purpose would be served by remanding the present case for trial.

13. Mr. A.K. Srivastava, learned counsel for respondent No.2-complainant vehemently opposes the present petition on the ground that the complaint filed by respondent No.2-complainant as well as the FIR discloses commission of offences under Sections 420/406 IPC. He also points out that four cheques of ₹ 25,000/- issued in the years 2002 and 2003 were signed by petitioner No.2.

14. Mr. Manoj Ohri, learned APP for State submits that even if eleven cheques taken back by the petitioners had expired, they would still constitute a property and document within the definition of Section 415 IPC. Mr. Ohri has also invited this Court's attention to Section 464 Cr.P.C. which reads as under:-

“464.Effect of omission to frame, or absence of, or error in, charge.—(1) No finding sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) In the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) In the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”

15. Having heard the learned counsel for parties, this Court is of the view that at the stage of framing charges, the Court is not expected to go deep into the probative value of the materials on record. If a grave suspicion arises, then the charge has to be framed. The Supreme Court in *State of Maharashtra, Etc. vs. Som Nath Thapa, Etc. Etc. (1996) 4 SCC 659*, has held as under:-

“32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think

that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

16. To a similar effect is the judgment of the Supreme Court in ***Sanghi Brothers (Indore) Private Limited vs. Sanjay Choudhary & Ors., (2008) 10 SCC 681***, wherein it has been held as under:-

11. Sections 227, 239 and 245 deal with discharge from criminal charge. In State of Karnataka v. L. Muniswamy it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. (underlined for emphasis). The Court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. (See Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia and State of W.B. v. Mohd. Khalid .)”*

17. In the opinion of this Court, in the present case, the eleven cheques which are alleged to have been taken back by the petitioners would constitute not only an important piece of evidence but would also prove the petitioners’ version.

18. Moreover, though the admission of liability by virtue of the eleven cheques stood extinguished when the complaint was filed, but this Court is of the view that on the strength of the other four alleged cheques given in the years 2002-2003, the respondent No.2-complainant could have filed a

recovery suit which would be within limitation on the date of the FIR. Consequently, the four cheques given in the years 2002-2003 constitute a valuable security.

19. It is settled law that a criminal matter can have civil nuances, inasmuch as a civil matter can have criminal nuances. At times, the same facts can give rise to both criminal and civil causes of action. Reading the complaint in its entirety, it cannot be said at this stage that a pure civil action has been converted into a criminal action. Consequently, the judgments cited by learned counsel for petitioner No. 2 are inapplicable to the facts of the present case.

20. Upon a reading of the complaint also, this Court is of the view that Section 114 of the Indian Evidence Act, 1872, would have no reliance inasmuch as at this stage, it cannot be said that respondent No.2-complainant has in any manner acted contrary to ordinary human conduct.

21. This Court is also of the opinion that Section 65(c) of the Indian Evidence Act, 1872 would have no application to the facts of the present case as in the present case the originals had not been destroyed or lost on account of the petitioners' own default or neglect. If the allegations in the FIR are true and correct, then Section 65(a) of the Indian Evidence Act, 1872, would be attracted to the facts of the present case and secondary evidence relating to the documents would be admissible.

22. It is also difficult to believe at this stage that petitioner No.2 has no legal links with M/s. Uma Shankar Kamal Narayan inasmuch as according to the FIR, four cheques given in the year 2002-2003 were signed by the petitioner No.2.

23. Undoubtedly, the petitioner No.2 has a right to speedy trial, but this Court is of the view that in the present instance, the petitioner No.2 has in no small measure contributed to the delay in the trial. In fact, the proceedings in the present case have left this Court with no doubt that the petitioner No.2 is primarily responsible for the delay in disposal of the present case.

24. As far as the contention that the present complaint is actuated by personal vengeance because of rejection of a matrimonial proposal, this Court is of the view that the said contention constitutes a defence of the petitioner No.2 which the petitioner No.2 would have to prove by leading evidence.

25. Consequently, this Court is of the view that there is no illegality or irregularity in the order passed by the Additional Sessions Judge, New Delhi. Accordingly, present petition and pending application are dismissed with costs of ₹ 50,000/- to be paid to the respondent-State within a period of eight weeks.

MANMOHAN, J

NOVEMBER 29, 2012

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