

Criminal Revision

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 4329 of 2009
Judgment On: 16-04-2010.

Sri Sekhar Biswas
versus
The State of West Bengal & Anr

POINTS:

QUASHING, SAME OFFENCE -Petitioner concluded of a charge under Section 138 of the Negotiable Instruments Act-Charge relating to an offence punishable under Section 420 of the Indian Penal Code whether be proceeded-Application for quashing of the said FIR on the sole ground that over the self-same allegations two criminal cases cannot be instituted, whether maintainable-Constitution of India, Article 20 sub-article (2) - Code of Criminal Procedure, 1973 S.300

FACTS:

Over the incident of dishonour of a cheque for Rs. 1,30,000/- the opposite party made a complaint in Court against the petitioner alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act and moved an application under Section 156 (3) of the Code of Criminal Procedure before the Learned Sub-Divisional Judicial Magistrate, against the petitioner alleging commission of an offence punishable under Section 420 of the Indian Penal Code. When the Learned Magistrate in exercise of his power under Section 156 (3) of the Code directed the said complaint to be treated as FIR and the investigation to be caused into the allegations made therein.

Accordingly, a specific case, under Section 420 of the Indian Penal Code has been registered against the petitioner.

The petitioner has now moved this Court for quashing of the said FIR on the sole ground that over the self-same allegations two criminal cases cannot be instituted.

HELD:

In the case at hand, the prohibition contained in sub-article (2) of Article 20 of the Constitution is not attracted inasmuch as this is not the case where the petitioner after being prosecuted and punished for any particular offence again is going to be prosecuted for the self-same offence. Here the petitioner has been concluded of a charge under Section 138 of the Negotiable Instruments Act and the impugned prosecution relates to an offence punishable under Section 420 of the Indian Penal Code.

Para-5

Similarly, the bar contained in Section 300 of the Code of Criminal Procedure is not attracted in the facts and circumstances of the case. The offence for which the petitioner was earlier tried and then acquitted by virtue of an order passed by the Appeal Court is not such an offence in respect of which the provisions of sub-section (1) of Section 221 or sub-section (2) thereof could have been invoked.

Para-6

For Petitioner : Mr. Dipanjan Chatterjee

For the State : Mr. Sohedu Sekhar Roy

For O.P. No. 2: Mr. Sourav Bhagat

THE COURT:

1. Over the incident of dishonour of a cheque for Rs. 1,30,000/- the opposite party no. 2 herein on October 23, 2003 made a complaint in Court against the petitioner alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act and on December 10, 2003 moved an application under Section 156 (3) of the Code of Criminal Procedure before the Learned Sub-Divisional Judicial Magistrate, Barrackpore against the petitioner alleging commission of an offence punishable under Section 420 of the Indian Penal Code. When the Learned Magistrate in exercise of his power under Section 156 (3) of the Code directed the said complaint to be treated as FIR and the investigation to be caused into the allegations made therein. Accordingly, a specific case being Bizpur Police Station Case No. 37 of 2005, under Section 420 of the Indian Penal Code has been registered against the petitioner.

The petitioner has now moved this Court for quashing of the said FIR on the sole ground that over the self-same allegations two criminal cases cannot be instituted.

2. Heard the Learned Counsels appearing on behalf of the parties. Perused the Case Diary and the case laws cited by the learned advocates appearing on behalf of the parties.

3. It is true although the aforesaid two cases, one under Section 138 of the Negotiable Instruments Act and other under Section 420 of the Indian Penal Code were instituted over the dishonour of the self-same cheque but the allegations are not same and identical. Moreover, the offences punishable under Section 138 of the Negotiable Instruments Act and under Section 420 of the Indian Penal Code are completely distinct and different and thus there is no bar for simultaneous continuation of the said two criminal cases.

4. The case instituted on the complaint relating to the offence punishable under Section 138 of the Negotiable Instruments Act, was ended in conviction and such order of conviction being challenged by the petitioner in a Criminal Appeal, the Learned Sessions Court reversed the order of conviction

and acquitted him. Thereafter, a Criminal Appeal has been preferred before this Court by the complainant challenging the said order of acquittal and the appeal is still pending. Whereas the aforesaid police case instituted pursuant to the order passed under Section 156 (3) of the Code has ended in charge-sheet for the self-same offence.

5. In the case at hand, the prohibition contained in sub-article (2) of Article 20 of the Constitution is not attracted inasmuch as this is not the case where the petitioner after being prosecuted and punished for any particular offence again going to be prosecuted for the self-same offence. Here the petitioner have been concluded of a charge under Section 138 of the Negotiable Instruments Act and the impugned prosecution relates to an offence punishable under Section 420 of the Indian Penal Code.

6. Similarly, the bar contained in Section 300 of the Code of Criminal Procedure is not attracted in the facts and circumstances of the case. According to Section 300 of the Code of Criminal Procedure, a person who has once being tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remain in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221 or for which he might have been convicted under sub-section (2) thereof. The offence for which the petitioner was earlier tried and then acquitted by virtue of an order passed by the Appeal Court is not such an offence in respect of which the provisions of sub-section (1) of Section 221 or sub-section (2) thereof could have been invoked.

7. Now, having gone through the Case Diary containing the First Information Report as well as the evidentiary materials collected during investigation I find it is the case of the complainant/opposite party that the accused/petitioner induced him to enter into an agreement for purchasing a residential

house at a cost of Rs. 4,00,000/- and obtained an advance of sum of Rs. 1,00,000/-. It was also agreed between the parties that the registration of sale deed would be made within six months upon payment of balance amount of Rs. 3,00,000/-. At the same time, the accused promised to make over all the relevant documents relating to the property in question shortly to the complainant. Since he neither executed the sale deed nor supplied the complainant, all the relevant documents relating to the property in question, the complainant asked for refund of the earnest money. When the accused person handed over to him a cheque for Rs. 1.30 lakhs and the complainant in good faith and without any remote doubt accepted the same and subsequently the said cheque was dishonoured due to insufficient fund. It is the categorical case of the complainant that at the time when the agreement for sale was executed between the petitioner and the complainant, the property in question was lying mortgaged with the ICICI Bank, Kolkata Branch and such facts of mortgage was never made known to the complainant. Therefore, it cannot be said on the evidentiary materials collected by the police during investigation, no case for submission of the impugned charge-sheet has been made out.

8. For the reasons stated above, I do not find any merit in this application and accordingly the same stands dismissed. Interim order, if any, stands vacated.

9. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)