

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ATUL SREEDHARAN

ON THE 7th OF APRIL, 2022

MISC. CRIMINAL CASE No. 46535 of 2018

Between:-

1. SHREE PRAKASH SINGH S/O LATE SHRI BISHWANATH SINGH, A 23/21 DLF PHASE I GURGAON HARYANA (HARYANA)
2. SMT. NANDITA SINGH W/O SHREE PRAKASH SINGH, A 23 /21 DLF PHASE I GURGAON (HARYANA)

.....PETITIONERS

(BY SHRI SURENDRA SINGH, LEARNED SENIOR COUNSEL WITH SHRI SIMON BENJAMIN AND SHRI SIVAM SINGH, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THR. STATION HOUSE OFFICER P.S. HABIBGANJ DISTT. BHOPAL (MADHYA PRADESH)
2. SUNITA SINGH W/O SHAILEHS SINGH , AGED ABOUT 48 YEARS, R/O NILMOHDIPUR GORAKHPUR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI A.S.PATHAK, LEARNED GOVERNMENT ADVOCATE AND SHRI MRIGENDRA SINGH, LEARNED SENIOR COUNSEL WITH MS.GUNCHA RASOOL, ADVOCATE)

(Heard through Video Conferencing)

This petition coming on for admission this day, this Court passed the following:

ORDER

The present petition has been filed by the petitioners herein for quash of Crime No.180/2013, which was registered at Police Station-Habibganj, Bhopal against them for an offence under section 420 of IPC simplicitor.

2. The contents of the FIR read thus:-

I Smt. Sunita Singh am the daughter of late Vishwanath Singh, Villa Mohidpur, Gorakhpur, Uttar Pradesh. I live at the above-mentioned address. I have equal share in the property of my late father and in this respect my brother had given me some cheques after taking my signature on some paper. I deposited cheque no.100532 for 10 lakh, cheque no.100534 for 10 lakh and cheque no.100535 for 10 lakh, all the three cheques drawn on Standard Chartered Bank, New Delhi in the Central Bank of India, Sahapura Branch, Bhopal. Cheque no.100527 for 10 lakh and cheque no.100528 for 10 lakh deposited in the Vidisha-Bhopal Rural Bank, Sahapura Branch and cheque no.100530 for 10 lakh deposited in State Bank of India, Shivaji Nagar, Bhopal but all the seven cheques have been dishonoured due to closure of account. Thus, my brother Prakash Singh has cheating me total of 64 lakhs. Please take appropriate action by registering criminal case against him. (English translation as annexed to the petition).

3. Thereafter, learned counsel for the State has read out from the 161 statement of the complainant-Sunita Singh. In addition to what she is

stated in the FIR, she says that she had suffered the loss of her Chequebook against which she has given stop payment instructions to her Bank and thereafter she says, that she suspects that perhaps, it is her brother i.e., the petitioner no.1 and her sister-in-law, the petitioner no.2 who may have taken away these chequebooks with the intent of defrauding her. It is essential to state here that in her 161 statement, the complainant/respondent no.2 only says that she suffered a loss of the chequebooks for which she has given a stop payment instruction to her Bank and thereafter, she says, that she suspects the petitioners of having taken the cheque-book. Where and when those cheque books were taken, no description or details is given. Thus, that part of the police statement is speculative and omnibus. She also does not say that any of the cheques from the said chequebook have been used by anyone on account of which she suffered a loss. The second set of allegations in the 161 statement is conspicuous by its absence in the FIR and appears to have been introduced in the police statement as an afterthought so as to implicate the petitioners for theft.

4. Learned counsel for the petitioners has submitted that the petitioner no.1 and the petitioner no.2 are related to each other. Father of the petitioner no.1 and the respondent no.2 had two wives. From the first wife, a son named Jai Prakash Singh (since deceased) was born. The second wife is Saraswati Singh, from whom the petitioner no.1 and the respondent no.2 were born. There was a partition on 27.11.2006 by which 50% of the share in the father's property went to Jai Prakash Singh and 25% went to the petitioner no.1 Shree Prakash Singh and the

remaining 25% went to second wife, the mother of the petitioner no.1 and the respondent no. 2, Saraswati Singh. Subsequently on 13.05.2009, there was an MOU between Shree Parkash Singh (the petitioner no.1) and Sunita Singh (the respondent no.2). As per which Shree Prakash Singh got 60% share in the property of Saraswati Singh and 40% of the share went to Sunita Singh.

5. The only short point to be decided in this particular case is whether the allegations in the FIR itself discloses that the cheques, which were deposited for encashment by the respondent no.2 and which bounced on account of closure of the account could constitute an offence u/s. 420 IPC? Learned counsel appearing for the respondent no.2 has stated that a case under section 138 of N.I. Act has also been filed which is pending before the learned trial Court. Thus, the only point to be considered by this court is whether the dishonour of the cheques could have only given a cause of action to register an FIR for an offence u/s. 420 IPC or whether the cause of action was only for the filing of an offence u/s. 138 of the Negotiable Instruments Act?
6. When a Special Law has been enacted to deal specifically to deal with cases of dishonour of a cheque, if in such a case the complainant who was suffered the loss on account of the dishonour of the cheques is also permitted to register an offence under the IPC, it would go to negate the very purpose for which the special law has been enacted. In such cases, experience is shown that the accused files an FIR against the complainant for offence under section 406, 420 or 379 of IPC for either theft or criminal breach of trust with regard to the cheques that have

been entrusted to the complainant or for an outright act of cheating. It is a well settled principle of law that the general law will not prevail over the Special Law as enshrined in the maxim *generalia specialibus non derogant*. The Ld. Counsel for the respondent no.2 has argued that the share which the respondent no.2 was to receive by way of the settlement entered into between her and the petitioner no.1 was not honoured. Even if that be so, the relief available to the respondent no.2 may be under the civil law by way of a suit for specific performance, rather than to contort and strain the facts to bring it under the purview of the criminal process. Under the circumstances, the registration of this case is *ex-facie* malicious and deserves to be quashed.

7. During the course of the arguments, learned counsel for the petitioners had mentioned that the husband of the respondent no.2 Mr. Shailesh Singh is a senior police officer in the Indian Police Service belonging to the Madhya Pradesh Cadre and that the possibility of the FIR having been filed under his influence cannot be discounted.
8. During the course of the arguments, this Court observed that where the police is reluctant to register the FIR if a poor man approaches the police station with a genuine grievance, the registration of an FIR in a case like the one at hand is rather unthinkable. Upon this, the learned Senior Counsel Shri Mrigendra Singh retorted by saying that this Court should rescue itself because of bias. This Court takes great umbrage to the conduct of the senior counsel who has cast aspersions on the neutrality of the Court without adequate cause. However, the Court refuses to recuse itself and condemns the conduct and the words used

by the senior counsel in the strongest possible terms. The Court was cut short by Mr. Mrigendra Singh before it could complete its observation that in the State of Madhya Pradesh, in comparison to other States, the situation is far better and the tendency of burking the crime rate is far lesser. The Senior Advocate in question is an Office Bearer of the Bar Council. If, I refer this case to the Bar Council, perhaps precious little will be done. However, that notwithstanding I still consider it essential to place this order before the Chairman of the Madhya Pradesh State Bar Council with a request to take the strictest possible action against the senior counsel for his intemperate and unpardonable conduct. The action taken will be a moment of truth, not just for the institutions of the Bar and the Bench, but to the people of this state with regard to the extent to which the Bar Council is willing to go in order to bring in line the erring members in the profession.

- 9.** An investiture of honour on a member of the Bar by designating him as a Senior Advocate is not for his vast knowledge, erudition, articulation and legal acumen alone, but it is an occasion where the court has acknowledged the Counsel's poise, patience and most importantly, his extreme grace, reflected in his conduct as a counsel. It is unbecoming of a person who dons silk to address the court in such a manner as has happened today only because he feels that the court does not agree with his submissions.
- 10.** In view of what has been argued heard and considered by this Court, this petition is allowed and the Crime No.180/2013 registered at Police

Station-Habibganj, Bhopal stands quashed and all consequent proceedings arising therefrom also stand quashed.

11. A copy of this order be sent to the office of the Chairman of the State Bar Council of Madhya Pradesh, requesting such action as the Bar Council may deem fit and proper.

With the above, the petition is finally disposed of.

(ATUL SREEDHARAN)
JUDGE

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