

(1978) 02 AHC CK 0090

In the Allahabad High Court

Case No : Criminal Misc. Application No. 5517 of 1976

Anand Swaroop Singh

APPELLANT

Vs

State of Uttra Pradesh and Others

RESPONDENT

Date of Decision : 23-02-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420

Citation : (1978) AWC 376

Hon'ble Judges : P.N. Goel, J

Bench : Single Bench

Advocate : Sidheshwari Pd, for the Appellant; A.G.A. and A.D. Giri, for the Respondent

Final Decision : Allowed

Judgement

P.N. Goel, J.—This is an application u/s 482, Code of Criminal Procedure.

2. Facts necessary for the disposal of this application are these; On 8-11-1974 Satya Prasad Mehra, Opposite party No. 2, filed a complaint before the Chief Judicial Magistrate, Varanasi, against the applicant with the allegations that on 7-7-1974 the applicant demanded a loan of Rs. 4,500/- for the business of his son saying that in lieu thereof he would give a post dated cheque for the said amount, which would be honoured on the due date, that out of the profits he would give a large amount, that therefore, the complainant advanced Rs. 4,500/- to the applicant, that on the due date, i.e. 2-11-1974 the cheque was not honoured by the Punjab National Bank on the ground that there was no money in the account of the applicant and that on 7-11-1974 he met the applicant who denied even to have taken the loan. On 9-6-1976 statement at opposite party No. 2 was recorded by the Magistrate. The Magistrate even allowed the applicant to cross-examine him. The cross examination revealed that opposite party No. 2 filed a civil suit for the recovery of his loan and that he had not lodged any report with the police. The Magistrate then passed an order on 16-6-1976 saying that

there was a prima facie case u/s 420, I.P.C. against the applicant. The applicant preferred a revision before the learned Sessions Judge. The Sessions Judge rejected the revision summarily on 7-7-1976. Therefore, the present application was moved.

3. Applicant's counsel and Sri S.K. Agarwal, holding brief for the State Counsel, have been heard.

4. The main point for consideration is whether the allegations made in the complaint made out an offence punishable u/s 420, I.P.C. Allegations in the complaint have been set out above at length. These allegations do not indicate that the applicant made any representation that he had sufficient money in the Bank and that, therefore, the cheque would be honoured on the due date. The position which appears is that the loan was advanced on the basis of cheque, instead of a pronote, receipt or bond. It later on the cheque was not honoured by the Bank and the applicant refused to accept even the taking of the loan, the remedy of the opposite party No. 2 was to have filed the civil suit. So far as the complaint is concerned, it does not at all contain the ingredients of the offence of cheating. A post dated cheque is nothing but a promise to pay in future. In the circumstances the Magistrate was not legally justified in passing the order dated 16-6-1976 to the effect that there was a prima facie case for framing a charge u/s 420, I.P.C. The Sessions Judge did not apply his mind to the case from a proper perspective. He dismissed the revision in a summary manner without examining the allegations of the complaint and the ingredients of an offence of cheating.

5. In view of the above, it is a fit case for the exercise of inherent power u/s 482, Code of Criminal Procedure. The application is allowed and the proceedings in Criminal Case No. 59 of 1975 Satya Prasad Mehra v. Anand Swaroop, u/s 420, IPC, pending before Munsif-Magistrate, Haveli, Varanasi, are quashed. The order dated 16-6-1976, passed by the Munsif Magistrate, Varanasi, and the order dated 7-7-1976, passed by the Sessions Judge, Varanasi are also quashed.

6. The interim order made on 31-8-1976 is hereby vacated.