

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr.M.P. No. 2924 of 2019**

1. M/s Century Cement (Prop. Century Textiles & Industries Ltd.),  
Mumbai through its Authorized Representative Mr. Saurabh Shankar
  2. Manoj Kumar Sharma @ Manoj Sharma
  3. Devendra Kumar Mishra @ D.K. Mishra
- ... Petitioners**

**-Versus-**

1. The State of Jharkhand
  2. Mohan Lal Bhalotia
- ... Opposite Parties**

**With**

**Cr.M.P. No. 2925 of 2019**

1. Jayant Dua
  2. Vibhu Goyle
- ... Petitioners**

**-Versus-**

1. The State of Jharkhand
  2. Mohan Lal Bhalotia
- ... Opposite Parties**

**With**

**Cr.M.P. No. 3167 of 2019**

1. Rakesh Kumar Verma
  2. Sanjay Kumar Sultania
  3. Alok Misra
- ... Petitioners**

**-Versus-**

1. The State of Jharkhand
  2. Mohan Lal Bhalotia
- ... Opposite Parties**

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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- For the Petitioners : Mr. Indrajit Sinha, Advocate (In all cases)  
Mr. Ajay Kumar Sah, Advocate  
Mr. Rishav Kumar, Advocate
- For the State : Mr. Santosh Kumar Shukla, A.P.P. (In Cr.M.P.-2924/19)  
Mr. Shiv Shankar Kumar, A.P.P. (In Cr.M.P.-2925/19)  
Mr. Rajesh Kumar, A.P.P. (In Cr.M.P.-3167/19)
- For O.P. No.2 : None

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08/12.06.2024 All these matters are arising out of same complaint case and the order taking cognizance and that is why, all these matters are being heard together with consent of the petitioners and State.

2. Notices upon opposite party no.2 are validly served in Cr.M.P.

Nos.2924 of 2019 and 2925 of 2019 and opposite party no.2 has appeared by way of appointing an Advocate in Cr.M.P. No.3167 of 2019, however, on repeated calls, nobody has responded on behalf of opposite party no.2. Identical was the situation on 02.04.2024 and for that, the matters were being adjourned with a view to provide one more opportunity to opposite party no.2. Today again on repeated call, nobody has responded on behalf of opposite party no.2 and in view of that, these matters are being heard on merit in absence of opposite party no.2.

3. Heard Mr. Indrajit Sinha, learned counsel appearing for the petitioners and Mr. Santosh Kumar Shukla, Mr. Shiv Shankar Kumar and Mr. Rajesh Kumar, learned counsel for the State in respective Cr.M.Ps.

4. In all these petitions, the prayers are made for quashing of the entire criminal proceeding arising out of Complaint Case No.379 of 2019 including the order taking cognizance dated 24.07.2019, pending in the Court of the learned Judicial Magistrate, 1<sup>st</sup> Class, Bokaro.

5. The complaint case was filed alleging therein that the petitioners allegedly entering into a criminal conspiracy to encash the cheques provided to the petitioners under the agreement dated 31.05.2012 by forging and fabricating bills of huge amount despite no material having been supplied. The complainant has further alleged that the petitioners have illegally tried to encash the aforementioned cheque and, thereafter, initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881. The complainant has also alleged that the petitioners have committed criminal

breach of trust, cheating, forgery for the purpose of cheating and utilizing the same for personal gains of the petitioners.

6. Mr. Indrajit Sinha, learned counsel appearing for the petitioners submits that in the year 2012, petitioner-company being desirous of expanding its operation in Bokaro district of Jharkhand entered into discussions with opposite party no.2 through Mr. Manoj Bhalotia, who is son of opposite party no.2 to act as the Clearing and Forwarding Agent (C & F Agent) of the petitioner-company. As per the various discussions between the parties, M/s New City Agency was to act as the C & F Agent of the petitioner-company for clearing and handling the cement consignments received at Bokaro and Sariya from time to time. In addition to the aforesaid, M/s New City Agency was also required to promote the sale of cement of the petitioner-company at Bokaro and Sariya. He submits that on the representations made by opposite party no.2, the petitioner-company entered into an agreement dated 31.05.2012 with M/s New City Agency for providing various services to the petitioner-company, as set forth in the agreement, contained in Annexure-2. He draws attention of the Court to Clause 16 of the agreement, which provides that M/s New City Agency was responsible for providing various services to the petitioner-company including procuring Government clearances for clearance of goods from Railway Goods Shed, arranging labour for unloading the cement, arranging trucks for transport of cement, arranging certificate from Railway Department for any shortfall in quantity, performing go-down supervision

and maintenance services, maintaining proper records of cement receipt, dispatch, sale, closing stock at the go-down etc. He also submits that in view of Clause 19 of the agreement, M/s New City Agency will be responsible for safe upkeep of the goods upon receipt as bailee and shall be liable to make good any loss to the company on account of shortage, theft, deterioration due to want of proper care. According to him, Clause 26 of the agreement gives power to the company to verify the stock of the cements remaining with the C & F Agent. He further submits that in terms of the security payable under the agreement, M/s New City Agency issued 7 cheques in favour of the petitioner-company, which were issued through Bank of Baroda and handed over to the representative of the petitioner-company. He submits that physical verification was conducted on 27.02.2017 and it was found that there was shortfall of 1468 MT of cement, which amounts to Rs.86,48,262/-, contained in Annexure-5. He submits that due to huge shortfall of goods, the petitioner-company called upon M/s New City Agency to confirm the shortfall of the goods and the proposed schedule for payment of the outstanding amount of Rs.86,48,262/-, which was acknowledged by Mr. Manoj Bhalotia, son of opposite party no.2 vide letter dated 28.02.2017 and assurance was given that such amount will be paid, thereafter, the said M/s New City Agency paid total sum of Rs. 16 Lakhs in two installments and it was also undertaken to pay further amount. He submits that the petitioner-company again called upon M/s New City Agency to pay the complete outstanding amount prior to 31.03.2017 and,

thereafter, when the amount was not paid, one cheque was presented before the Bank of Baroda, Raipur Branch in the State of Chhatisgarh. The said cheque was not honoured and, thereafter, the company filed complaint case under Section 138 of the Negotiable Instruments act in the Court of the learned Judicial Magistrate, 1<sup>st</sup> Class, Tilda-Neora, Raipur, State-Chhatisgarh. He submits that the said case was filed by the company on 15.01.2019, in which, the learned Court at Raipur, Chhatisgarh has been pleased to issue summons to opposite party no.2 on 28.01.2019 and after knowing about filing of the said case before the competent Court at Chhatisgarh, the present complaint case has been filed by the complainant on 29.03.2019. He submits that even if any case is made out i.e. civil in nature and for that, criminal case has been filed, which is malicious. He submits that only to save the skin in the case filed at Chhatisgarh, the present complaint case has been filed maliciously against the petitioners, who happened to be the officers of the company, namely, M/s Century Cement. On these grounds, he submits that the entire criminal proceeding may kindly be quashed.

7. Learned counsel for the State in respective cases jointly submit that the learned Court has been pleased to take cognizance and all these arguments can be appreciated by the learned Court in the trial.

8. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record as well as the order taking cognizance and finds that it is an admitted position that the

agreement was entered between the parties on 31.05.2012 and M/s New City Agency was provided business work of the said company in light of the terms and conditions specified in the said agreement. On verification of stock in terms of Clause 26 of the agreement, discrepancy was found to the tune of Rs.86,48,262/-. Vide letter dated 28.02.2017, the said M/s New City Agency admitted to pay the said amount and, thereafter the amount of Rs.9 Lakhs in two installments was paid and vide letter dated 02.03.2017, contained in Annexure-7, assurance was given to pay further amount. It has been pointed out by the learned counsel for the petitioners in course of argument that the company has received sum of Rs.16 Lakhs in totality out of the said outstanding amount. Thus, it is crystal clear that the dispute is there with regard to an agreement and undertaking was also there of M/s New City Agency of fulfilling the said loss to the company. The cheque in question was presented by the company in the bank, which was not honoured and, thereafter, the complaint case was filed in the competent court in the State of Chhatisgarh under Section 138 of the Negotiable Instruments Act and, thereafter, the present case has been filed by the complainant. The filing of the case at Raipur Civil Court under Negotiable Instruments Act and issuing of cheque by opposite party no.2 and directing the bank to stop payment are also admitted in the complaint petition itself, which clearly suggests that if any case is made out i.e. civil in nature.

9. In this background, if any complaint case is filed by any person, learned Court has got responsibility to examine the facts cautiously and

then only to proceed in the matter. The said power is required to be exercised with great caution and after suitable judicial application of mind and role of lower judiciary in preventing abuse of court process has been considered by the Hon'ble Supreme Court in the case of ***Krishna Lal Chawla and others v. State of Uttar Pradesh and another***, reported in ***(2021) 5 SCC 435***, wherein, in paragraphs 16, 17, 20, 21, 22 and 23, it has been held as under:

***“Role of the lower judiciary in preventing abuse of court process***

**16.** *We find it imperative to observe that this is a case that should not have been allowed to reach as far as this Court. The justice dispensation machinery in India is plagued with backlogs, with 70% of the pendency before the subordinate courts being on the criminal side. [ Roshni Sinha, "Examining Pendency of Cases in the Judiciary", PRS INDIA (8-8-2019).] A significant factor in this backlog is the vast mass of frivolous litigation instituted year after year by litigants with an intent to use the courts of justice for their own mischievous ends. Curtailing such vexatious litigation is, thus, a crucial step towards a more effective justice system—a step that cannot be taken without the active involvement of the lower judiciary, especially in criminal proceedings.*

**17.** *Immediately after the criminal justice system is set in motion, its course is almost entirely dependent on the judicial application of mind by the Magistrate. When a police complaint is filed on the commission of a cognizable offence under Section 154 CrPC, the Magistrate decides if the charge against the accused person is made out before the trial begins. Separate procedure is prescribed if the complaint under Section 200 CrPC is filed. The aforesaid provisions make it abundantly clear that the Magistrate carries the stream of criminal proceeding forward after it is set in motion by the informant/complainant. Consequently, and automatically, the Magistrate also carries the responsibility for ensuring this stream does not carry forward in cases where it should not.*

**20.** *It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in "fact-finding" owing to the adversarial nature of our justice system. However, Section 165 of the Evidence Act, 1872 by providing the Judge with*

*the power to order production of material and put forth questions of any form at any time, marks the influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation.*

**21.** *All of this leads to one inescapable conclusion. That the trial Judge has a duty under the Constitution and the CrPC, to identify and dispose of frivolous litigation at an early stage by exercising, substantially and to the fullest extent, the powers conferred on him. This Court has earlier emphasised on the high degree of responsibility shouldered by the trial Judges in All India Judges' Assn. (1) v. Union of India [All India Judges' Assn. (1) v. Union of India, (1992) 1 SCC 119 : 1992 SCC (L&S) 9] . Ranganath Misra, C.J. (as he was then) writing for himself and two others stated: (SCC p. 134, para 42)*

*"42. The trial Judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in Court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personality, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful."*

**22.** *Frivolous litigation should not become the order of the day in India. From misusing the public interest litigation jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfil personal vendetta. The Indian judiciary has taken cognizance of this issue. In 2014, this Court elucidated as follows, the plight of a litigant caught in the cobweb of frivolous proceedings in Subrata Roy Sahara v. Union of India [Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712] : (SCC p. 642, para 191)*

*"191. ... One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them*



*for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his." While the Court's ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well. We note, with regret, that 7 years hence, and there has still been no reduction in such plight. A falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself.*

*23. As aforesaid, the trial courts and the Magistrates have an important role in curbing this injustice. They are the first lines of defence for both the integrity of the criminal justice system, and the harassed and distraught litigant. We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court of this land."*

10. So far as cheating and preparation of false document is concerned, three ingredients are required to be fulfilled for making out a case. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of **Mohammed Ibrahim and others v. State of Bihar and another**, reported in **(2009) 8 SCC 751**, wherein, in paragraphs 13 and 14, it has been held as under:

*"13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other*

accused.

**14.** An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

*In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses."*

In view of the above judgment, the case of cheating is not made out against the petitioners in the facts of the present case.

11. It is an admitted fact further that the cheque was issued as security pursuant to financial transaction by M/s New City Agency, which is admitted in the complaint petition itself and that cheque cannot be considered as worthless piece of paper under every circumstance. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of ***Sripati Singh (Since Deceased) through his son Gaurav Singh v. State of Jharkhand and another***, reported in ***2021 SCC OnLine SC 1002***, wherein, in paragraph 17 it has been held as under:

*“17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. ‘Security’ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.”*

12. In view of the above, when the case under Section 138 of the Negotiable Instruments Act was already filed by the petitioner-company, opposite party no.2 was having all the opportunity to defend the case in that pending complaint case and without doing so, he has filed the present complaint case implicating the petitioners.

13. In this background, the present controversy poses a typical example of frivolous litigants abusing Court process to achieve their mischievous ends. Since the matter has already reached to the High Court, the High Court is required to pass appropriate order to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means.

14. In view of the above facts, reasons and analysis, the Court comes to a conclusion that the present case is arising out of an agreement and the dispute, if any, is there, that is civil in nature and for that complaint case

has been filed only to cut short the civil proceeding where some delay take place in deciding the cases and the present case has been filed after knowing about filing of the complaint case by the petitioner-company in the State of Chhatisgarh, which clearly suggests that this is a malicious prosecution against the petitioners, as such, the entire criminal proceeding arising out of Complaint Case No.379 of 2019 including the order taking cognizance dated 24.07.2019, pending in the Court of the learned Judicial Magistrate, 1<sup>st</sup> Class, Bokaro are, hereby, quashed.

15. Accordingly, these petitions are allowed and disposed of.

**(Sanjay Kumar Dwivedi, J.)**

*Ajay/ A.F.R.*