

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Rev. P. No. 1 of 2021

Date of Decision: 06.03.2023

Smti. Dasara Suting

Vs.

Smti. Lina Kharsyntiew

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.K. Borah, Adv.

For the Respondent(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Ms. P. Biswakarma, Adv.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

J U D G M E N T

1. This is a revision petition preferred by the petitioner herein, under Section 397 Cr.P.C., being aggrieved by the judgment and order dated 27.01.2020 passed by the learned Judicial Magistrate First Class, Shillong in C.R. Case No. 1741(S) of 2013.

2. The brief background of the case is that the petitioner has

obtained a loan from the respondent for an amount of ₹ 10,00,000/- (Rupees ten lakhs) only by deposit of her land documents in respect of her landed property situated at New Colony, Laitumkhrah, Shillong. Thereafter, the petitioner has repaid ₹ 4,00,000/- (Rupees four lakhs) only in two instalments of ₹ 3,00,000/- (Rupees three lakhs) only and ₹ 1,00,000/- (Rupees one lakh) only respectively. Then for repayment of the remaining amount, she has handed over a blank cheque to the respondent.

3. The respondent then entered an amount of ₹ 10,00,000/- (Rupees ten lakhs) only in the cheque and proceeded to encash the same, but due to insufficiency of fund, the same was dishonoured. The respondent caused issue of a notice upon the petitioner who replied by stating that the amount of ₹ 10,00,000/- (Rupees ten lakhs) only is not correct as ₹ 4,00,000/- (Rupees four lakhs) only was returned and only ₹ 6,00,000/- (Rupees six lakhs) only remained as balance and if interest is calculated thereon, the total amount will come to ₹ 7,33,000/- (Rupees seven lakhs thirty three thousand) only. However, the respondent went to the bank to re-encash the said cheque of ₹ 10,00,000/- (Rupees ten lakhs) only but by that time, the petitioner has instructed the Bank to stop payment.

4. The respondent has then taken recourse to the provision of Section 138 of the Negotiable Instruments Act, 1881 by filing a complaint

before the court of the learned Judicial Magistrate at Shillong for an alleged dishonour of a cheque for ₹ 10,00,000/- (Rupees ten lakhs) only drawn by the petitioner and which case was registered, initially as C.R. Case No. 1381(C) of 2011 but later renumbered as C.R. Case No. 1741(S) of 2013.

5. The learned Trial Court after conclusion of the trial had convicted the petitioner and had imposed a fine of ₹ 13,00,000/- (Rupees thirteen lakhs) only. Hence this petition.

6. Mr. P.K. Borah learned counsel for the petitioner has submitted that on receipt of the notice from the court, the petitioner entered appearance on 22.02.2012. On that date, the particulars of the offence of which the petitioner was accused of was not stated to her. This, according to the learned counsel is the procedural flaw committed by the Trial Court and as such, the proceedings stands vitiated on this ground alone.

7. Another contention raised by the learned counsel for the petitioner is that in course of proceedings, the petitioner has filed the evidence of her witnesses by way of affidavit. However, these defence witnesses were never cross-examined by the complainant/respondent and eventually, on 06.10.2015, on the submission of the learned counsel for the complainant/respondent, the cross-examination of the defence's witnesses was closed. This has led to the non-consideration or rejection of the

evidence of the defence's witnesses by the learned Trial Court which is reflected in the contents of the impugned judgment and which rejection has affected the merits of the petitioner's case before the said court.

8. The learned counsel has also submitted that the learned Trial Court has noticed that since a summons trial was adopted by the Court, notice to the accused person under Section 251 Cr.P.C. has not been issued which is mandatory in nature. This relates to order dated 14.10.2019 where the Court has made such observations. However, on the submission of the learned counsel for the complainant/respondent that since the accused person/petitioner has already taken part in the proceedings and is well aware of the case, non-examination of accused person under Section 251 does not vitiate the proceedings and such defects is curable under Section 464 Cr.P.C. The fact that the learned Trial Court has heeded the submission of the complainant/respondent and has proceed to the judgment stage, the same is therefore not tenable and has rendered the impugned judgment liable to be set aside and quashed.

9. In support of his case, the learned counsel has cited the following judgments:

- i) Mr. Vijay Mallya vs. M/s.G.M.R. Hyderabad International Airport Ltd.; Criminal Revision Case Nos. 1798 of 2014,

Order dated 09.09.2014, Andhra High Court, paras 7, 10, 11(B), 13 & 15;

ii) Ramesh Kumar Thind vs. Lakhvir Singh; CRM-M-31268-2014, order dated 10.09.2014, High Court of Punjab & Haryana at Chandigarh;

iii) Arvind Kejriwal & Ors vs. Amit Sibal & Anr.; CRL. M.C. 5245/2013; order dated 16.01.2014; Delhi High Court, paras 4 (ii), 15, 16 & 18;

iv) Narain & Ors. v. State of Punjab: AIR 1959 SC 484

10. Mr. H.L. Shangreiso, learned Sr. counsel appearing for the respondent, at the outset has challenged the maintainability of this revision petition by submitting that the petitioner has come before this Court against a final order passed by the learned Judicial Magistrate, for which there is an appeal provision, but the petitioner has instead come by way of revision which is not permissible. Hence this petition is liable to be dismissed on this ground alone.

11. On the contention of the petitioner that non-compliance of the provision of Section 251 Cr.P.C. would vitiate the proceedings, the learned Sr. counsel has submitted that from the contents of the order dated

14.10.2019 it can be seen that the petitioner has conceded to the submission made that irrespective of the said provision not having been followed, the matter may proceed for judgment and as such, the issue cannot be agitated at this juncture.

12. The learned Sr. counsel has further submitted that even otherwise, from the records, it can be seen that on the complainant/respondent causing issue of a notice under Section 138 of the NI Act, the petitioner on receipt of the same has replied and responded to the same, therefore this can be assumed as a fact that the petitioner is aware of the offence she is accused of and has also participated in the trial without raising any objection on the non-compliance of Section 251.

13. The learned Sr. counsel has also submitted that even if the respondent has declined to cross-examine the defence's witnesses, the same may be detrimental to the case of the complainant/respondent and as such, there is no reason for the petitioner to be aggrieved by such action of the respondent.

14. This Court has given due consideration to the submission and contention raised by the parties herein, however, the initial objection of the respondent on the issue of maintainability has first to be decided and if found in the negative, the merits need not be gone into.

15. As seen from the petition, the petitioner has preferred this petition under *Section 397 of the Code of Criminal Procedure, 1973*, which reads as follows:

“397. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

16. In a case under Section 138 of the NI Act, 1881, the same being proceeded before the court of the first instance, that is, the court of the Judicial Magistrate or Metropolitan Magistrate as the case may be, any judgment and order passed thereon is appealable before the court of the Session Judge or Additional Session Judge, thereafter, if aggrieved, the party may move the High Court on an application for revision under Section 397 Cr.P.C.

17. The provision of *clause (a) of sub-section 3 of Section 374 Cr.P.C.* would also be applicable as far as the case of the petitioner is concerned for which the same is reproduced herein:

“374. Appeals from convictions.—(1)...

(2)...

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or...”

18. This principle and process was stated by the Hon’ble Supreme Court in the case of ***Damodar S. Prabhu v. Sayed Babalal H.; (2010) 5 SCC 663*** at para 20 where it was held as under:

“20. It may be noted here that Section 143 of the Act makes an offence under Section 138 triable by a Judicial Magistrate, First Class (JMFC). After trial, the progression of further legal proceedings would depend on whether there has been a conviction or an acquittal.

- ***In the case of conviction, an appeal would lie to the Court of Sessions under Section 374(3)(a) CrPC; thereafter a revision to the High Court under Section 397/401 CrPC and finally a petition before the Supreme Court, seeking special leave to appeal under Section 136 of the Constitution of India. Thus, in case of conviction there will be four levels of litigation.***
- ***In the case of acquittal by the JMFC, the complainant could appeal to the High Court under Section 378(4) CrPC, and thereafter for special leave to appeal to the Supreme Court under Article 136. In such an instance, therefore, there will be three levels of proceedings.”***

19. On this premise, this Court, following the above, is of the view that the instant application of the petitioner is not maintainable as the petitioner has forgo one forum and has directly approached this Court which is not proper.

20. On this ground alone, this petition is deemed not maintainable and the same is hereby rejected. As mentioned, the merits of the matter is not required to be gone into.

21. The petitioner may approach the competent court and considering the fact that the issues raised deserved to be heard on merits, the time period consumed while pursuing this matter before this Court is hereby condoned.

22. Petition disposed of. No costs.

23. Registry to send back the lower court case record.

Judge

Meghalaya
06.03.2023
"Tiprilynti-PS"