

Party Name : SUBAL CH. DAS Vs TRIPURA REAL ESTATE CONST. LTD & ORS

THE HONBLE MR. JUSTICE S.TALAPATRA

Heard Mr. D. Deb, learned counsel appearing for the petitioner as well as Mr. H.K. Bhowmik, learned counsel appearing for the respondents No.1,2 & 3.

This is a petition filed under Section 482 of the Cr.P.C questioning the legality of the order dated 29.01.2014 delivered in case No. N.I 132 of 2012 by the Additional Chief Judicial Magistrate, West Tripura, Agartala. For the purpose of reference, the said order has entirely reproduced herein below:

"The complainant is absent and I have perused the record.

The complainant did not file requisite properly in spite of specific order of the court on 07.10.13, 27.11.13 and 20.12.13.

Today the complaint is absent and no requisites have been filed.

It appears that the complainant is not interested to proceed with this case.

Consequently the instant complaint case is dismissed.

The case is accordingly disposed of without contest.

Enter the result in the TR."

Mr. D. Deb, learned counsel appearing for the petitioner has urged this Court that the petitioner herein, who is the complainant before the court of Addl. Chief Judicial Magistrate, West Tripura, Agartala filed the complaint for taking cognizance under Section 138 of the Negotiable Instrument Act as a cheque amounting to Rs.1,00,000/- (Rupees once lakh) was bounced for insufficiency of fund. But from the order, it transpires that on three consecutive occasions the complainant failed to file the requisites properly to serve the summons on the respondents No. 1, 2 & 3 herein. As consequence thereof and in exercise of the power provided under Section 256 of the Cr.P.C, the impugned order has been passed. Mr. Deb, learned counsel has further submitted that if the order is not interfered with, there would be miscarriage of justice as the complainant was at dark as he believed that the engaged counsel or his clerk would take the steps for serving summons on the said respondents but when the said impugned order was passed, he was taken aback and has approached this Court for invoking the inherent power to give him an opportunity to continue with the prosecution against the respondents No. 1, 2 & 3.

Mr. Bhowmik, learned counsel appearing for the respondents No.1,2 & 3 has seriously resisted such prayer contending that there is no infirmity in the said order. This Court has no difference of opinion to what Mr. Bhowmik, learned counsel has submitted that the order does not suffer for any infirmity or illegality. But having regard of the substantive ends of justice the latches that has appalled the process provide a ground to interfere with this order. For averting the failure of the justice that might occur if this impugned order dated 29.01.2014 is not set aside, the impugned order dated 29.01.2014 is interfered with and set aside, subject to payment of Rs. 5,000/- (Rupees five thousand) to the respondents No. 1, 2 & 3 as for the latches of the complainant they have been compelled to bear the expenses of contesting this petition. It is made clear that unless the said sum of Rs. 5,000/- is paid to the court of the Additional Chief Judicial Magistrate, West Tripura, Agartala for payment to the respondents No. 1 2 & 3, the Addl. Chief Judicial Magistrate shall not proceed with the case and again for such default, the respondents No.1,2 & 3 be discharged without inquiry or trial.

Mr. Bhowmik, learned counsel has submitted that he would represent the respondents No.1,2 & 3 in the trial court. As such the complainant and the respondents No.1,2, & 3 shall appear before the trial Court on **23rd June, 2015**. Hence, there would be no requirement of issuing summons on the said respondents No.1,2 & 3, who are accused in the complaint.

Having held so, this petition stands allowed to the extent as indicated above.

A copy of this order be transmitted to the Addl. Chief Judicial Magistrate, West Tripura, Agartala as expeditiously as possible.