

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 4th February, 2015

+ **Crl. M.C. No.364/2015 & Crl. M.A. No.1430/2015**

ROBIN BARTHOLOMEW & ANR Petitioners
Through Mr.Soumya Dutta, Adv. with
Mr.A.K.Pandey & Mr.Shiv Shankar
Banerji, Adv.

versus

STATE (NCT) OF DELHI & ANR Respondents
Through Mr.Ravi Nayak, APP for the State.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioners under Section 482 Cr.P.C. challenging the order dated 3rd December, 2014 passed by the Addl. Sessions Judge, Dwarka Courts, New Delhi in Criminal Revision No.28/14.

2. Brief facts of the case are that DBS Bank (respondent No.2 herein) had filed a complaint case against the petitioners alleging that petitioners are the authorized signatories being Managing Director and Director of M/s Crew B.O.S. Products Ltd and they are beneficiary of multiline credit facilities sanctioned by the complainant/ respondent No.2-Bank comprising of purchase bills discounting and letter of credit/buyers credit undertaking upto an aggregate limit of INR 150 Million vide working capital facilities agreement and

agreement for commercial letter of credit dated 2nd January, 2008. The facilities were renewed on the requests of petitioners. Board Resolution was passed with regard to renewed/realigned credit facilities by way of working capital limits and petitioners were authorised to inter-alia sign, affirm, confirm and execute the loan documentation, disbursal instructions, acknowledge the debit or any other writing etc. which the bank may require. The documents were executed. The working capital facility was availed by the petitioners. Purchase Bill Discounting facility carried the maximum tenure of 90 days and the petitioners were to make the payment of bill discounted within the said period being the amount outstanding under the financial facility without any delay, demur or protest together with interest. However, despite of various reminders and requests by the bank, the petitioners have failed to honour their obligation and neglected to make the payment of the outstanding amount which is an acknowledged and enforceable debt under law.

3. It is further the case of respondent No.2 that the petitioners in partial discharge of liability under credit facility availed by it, issued cheques bearing No.964567 for Rs.18,26,000/-, 964491 for Rs.24,14,500/-, 964571 for Rs.21,34,000/-, 964497 for Rs.26,29,000/-, 964572 for Rs.21,78,000/- and 964569 for Rs.21,23,000/-, 964557 for Rs.25,13,500/- and 964584 for Rs.33,55,000/- (total amounting to Rs.1,91,73,000/). It is further averred that the said cheques on presentation, were returned unpaid by the banker of the petitioners with remarks "payment stopped by drawer".

4. Since the payment was stopped by the petitioners, legal notice was issued by respondent No.2 on 10th May, 2011 which was served upon the petitioners but despite of the same, the petitioners failed to pay the said amount. The respondent No.2 left with no option filed the complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioners. Pre-summoning evidence was led by way of affidavits. The petitioners were summoned by order dated 7th July, 2011. Learned counsel for the petitioners appeared on 25th August, 2011. He sought time to cross-examine the respondent No.2's witnesses and permission was granted accordingly. On 4th September, 2013, opportunity to cross-examine the witnesses was closed. The statements of the petitioners under Section 313 Cr.P.C. were recorded on 24th April, 2014. Thereafter, the petitioners moved an application under Section 326(3) Cr.P.C. for de novo trial. By order dated 2nd June, 2014, the learned Trial Court dismissed the application. Subsequently, the petitioners filed the revision petition, being Crl. Revision No.28/14 which was also dismissed by the Addl. Sessions Judge/Special Judge (NDPS), Dwarka Courts, New Delhi by passing a detailed order dated 3rd December, 2014. The present petition has been filed by the petitioners challenging the said order.

5. Having gone through the pleadings and the orders passed by the learned Trial Court as well as Revisional Court, I am of the view that no interference is required in the orders, due to following reasons:-

- (i) The Supreme Court in the case of **Rajan Kumar Machananda v. State of Karnataka**, JT 1987(4) SC 637, in

para 2 held as under:-

“2. Heard learned Counsel for the parties. The respondent State had challenged the order before the Court of Sessions when the learned Magistrate before whom the matter was proceeding directed release of the truck in favour of the appellant. The Revisional Court dismissed the petition of the State. A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

- (ii) In another case titled as ***Dharampal and others v. Smt. Ramshri and others***, AIR 1993 SC 1361, the Supreme Court held as under:-

“4. There is no doubt that the learned Magistrate had committed an error in passing the subsequent orders of attachment when the first attachment was never finally vacated and had revived the moment the revision application filed against it was dismissed by the learned Sessions Judge. It appears that none of the parties including the Sessions Judge realised this error on the part of the Magistrate. The learned Sessions Judge had also committed a patent mistake in entertaining revision application against the fresh orders of attachment and granting interim stays when he had dismissed revision application against the order of attachment earlier. Let that be as it is. The question that falls for our consideration now is whether the High Court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of the 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr. R. No.180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under S. 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside.”

- (iii) This Court is conscious about the fact that if there is grave

miscarriage of justice and abuse of the process of Court or required procedure has not been complied with by the Metropolitan Magistrate, the High Court in its jurisdiction under Section 482 Cr.P.C. can correct the grave miscarriage of justice under special circumstances. The Supreme Court in the case of ***Rajiv Thapar & Ors. v. Madan Lal Kapoor***, 2013(1) Crimes 169 (SC) after discussing the law on the subject in para 23 has crystallized the position of the power vested in the High Court under Section 482 Cr.P.C. The four steps mentioned in the said para are reproduced here under:-

- “(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
- (ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
- (iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/ complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?”

(iv) It appears from the record that many times, opportunities were granted to the petitioners to cross-examine the witnesses of respondent No.2/complainant. However, the petitioners were delaying the trial Court proceedings. The complaint was filed in 2011. There is no bonafide intention on the part of the petitioners.

6. Under these circumstances, I am of the considered view that the present case does not get covered within the exception of the decision of the Supreme Court in ***Rajiv Thapar***'s case (supra).

7. The present petition is accordingly dismissed. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 04, 2015