

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

% Order delivered on: 30th January, 2015

+ **Crl. M.C. No.5145/2014 & Crl. M.A. No.17582/2014**

REVOLUTION CLOTHINGS PVT LTD & ORS Petitioners
Through Mr.Puneet Bajaj, Adv. with
Mr.Amit Bajaj, Adv.

versus

ICICI BANK Respondent
Through Mr.Punit K. Bhalla, Adv. with
Ms.Chetna Bhalla, Adv.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. Due to dishonour of cheque, the respondent filed a complaint against the petitioners under Section 138 of the Negotiable Instruments Act, 1881. The complaint was taken up by the Metropolitan Magistrate. Thereafter, the notice under Section 251 Cr.P.C. was served upon the petitioners on 16th January, 2010. The evidence was led by the respondent/complainant and examined PW-1 Mr.Abhishek Aggarwal who was partially cross-examined on 17th April, 2010 and 22nd May, 2010. Thereafter, the said Court was presided over by another Metropolitan Magistrate and the remaining cross-examination of PW-1 was conducted before the new Court.

2. The petitioners thereafter filed an application for *de novo* proceedings on the basis of the judgment of the Supreme Court in

the case of **Nitinbhai Saevatilal Shah & Anr. vs Manubhai Manjibhai Panchal & Anr**, AIR 2011 SC 3076 mainly, on the reason that since the entire evidence had not been led before the same Court and some part of the evidence was recorded by the new Metropolitan Magistrate Court, therefore, the *de novo* proceedings be carried out. The application was dismissed by the Metropolitan Magistrate, Dwarka Courts, New Delhi by order dated 22nd May, 2012. The said order was challenged by the petitioners by filing of the revision petition under Sections 397/399 Cr.P.C. After hearing both the parties, the said revision petition was dismissed by the Additional Sessions Judge-05, Dwarka Courts, Delhi by order dated 23rd August, 2014. By relying upon the decision given by Andhra Pradesh High Court in the case of **Manju M. Aggarwal v. The State of Andhra Pradesh**, Criminal Petition No.13161 of 2013, decided on 26th March, 2014, the following reasons were given by the Revisional Court:-

“This judgment is squarely application to the facts and circumstances of the present case. In view of this judgement, plea of petitioners cannot be accepted and specific reason is not required to be given if the Court decides to try the offence under Section 138 N.I. Act as a summary trial at the stage of giving notice under Section 251 Cr.P.C. Keeping in view the fact that notice was given to petitioner by the Ld. Trial Court under Section 251 Cr.P.C. and evidence in the matter is being recorded in complete manner and not only substance of evidence, I affirm the finding of Ld. Trial Court.”

3. Both the above said orders dated 22nd May, 2012 and 23rd August, 2014 have been challenged by the petitioners in the present

petition. The matter was adjourned for settlement, if any. However, according to the learned counsel for the respondent, the petitioners are not ready to pay even the principal amount. Therefore, both the parties have made their submissions.

4. Having heard the learned counsel for the parties, I am of the view that the present petition under Section 482 Cr.P.C. is liable to be dismissed on the 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 the Court or required procedure has not been complied with by the Metropolitan Magistrate, the High Court in its jurisdiction under Section 482 CrPC 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) The present case is totally covered by the case of **Manju M. Aggarwal** (supra), as it appears from the record that many times, opportunities were granted to the petitioners to cross-examine PW-1. However, the petitioners were delaying the trial court proceedings. The complaint was filed in 2010. On many dates, the petitioners have cross-examined PW-1 and did not complete the same. In routine course when the earlier Court was presided over by the new Metropolitan Magistrate, the present application for *de novo* proceedings was filed by the petitioners. There is no bonafide intention on the part of the petitioners.

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

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

(MANMOHAN SINGH)
JUDGE

JANUARY 30, 2015