

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1399 of 2000

PRABHABATI DEVI & ANR.
VS.
STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Avik Ghatak, Adv.
Mr. Sreemayi Roy, Adv.
Mr. Afreen Begum, Adv.

For the Opposite Parties : Mr. Asif Hussain, Adv.
Mr. Abhishek Bhandari, Adv.
Mr. Swapan Nath, Adv.
Mr. Abhishek Singh, Adv.

Hearing concluded on : 11th November, 2022

Judgement on : 18th November, 2022

Siddhartha Roy Chowdhury, J.:

1. Challenge in this proceeding under Section 482 of Cr.P.C., read with Article 227 of the Constitution of India is to the judgement and order passed by learned Judge, 7th Bench, City Sessions Court, Calcutta in Criminal Revision No. 16 of 1995, reversing the order of acquittal passed by learned Metropolitan Magistrate, 17th Court, Calcutta in Complaint Case No. C/200/92 into an order of conviction.
2. Briefly stated, the petitioners Prabhabati Devi and Shankar Prasad Shrivastab issued a cheque of Rs. 44,923/- on 9th September, 1991 in favour of Radhe Shyam Murarka in discharge of their liability to pay

the value of 65 bags of gram supplied on 31st July, 1991. The cheque was presented by the drawee and was returned for want of fund with the remarks "Not arranged for". The complainant, thereafter, sent a notice dated 20th March, 1992 to the accused persons under registered post with acknowledgement due which came back with the endorsement "Not claimed". Thereafter, the petition of complaint was filed under Section 138/141 of the N.I. Act. The parties adduced evidence and learned Trial Court was pleased to hold that the complainant failed to comply with the mandatory provision as laid down under the N.I. Act as the notice was not served upon the accused persons.

3. Learned Trial Court recorded an order of acquittal which was challenged before the learned Judge, 7th Bench, City Sessions Court, Calcutta by the complainant in a criminal revision. Learned Judge, 7th Bench, City Sessions Court, Calcutta while exercising the jurisdiction of criminal revision, was pleased to reverse the finding of learned Trial Court and recorded an order of conviction of the Opposite Parties and sentenced them to pay fine of Rs. 90,000/- within one month from the date of order in default to suffer imprisonment for one year.
4. Assailing the said order passed by learned Judge, 7th Bench, City Sessions Court, Calcutta in Criminal Revision No. 16 of 1995, the convicts preferred this application seeking order to quash the impugned judgement.
5. Mr. Avik Ghatak, learned Counsel for the petitioners submits that learned Judge, 7th Bench, City Sessions Court, Calcutta failed to

exercise the jurisdiction properly which resulted into miscarriage of justice.

6. Drawing my attention to the provision of Sub-Section 3 of Section 401 of the Code of Criminal Procedure, Mr. Ghatak, learned Counsel for the petitioners submits that by exercising the revisional jurisdiction an order of acquittal cannot be converted into an order of conviction. Therefore, the judgement impugned, should not be allowed to remain in force.

7. Mr. Asif Hussain, learned Counsel, representing the Opposite Party No. 1 candidly submits that the law is not in favour of the Opposite Party No. 1 so far the judgement impugned is concerned. But Mr. Hussain submits that provision of Section 482 of the Cr.P.C. can always be invoked by this Court to undo the wrong if any appears to have been committed by learned Trial Court, in order to secure ends of justice. It is adverted by Mr. Hussain that learned Trial Court refused to accept the service of statutory notice under Section 138 of the N.I. Act as good service, as the envelope containing the notice was returned to the sender with the postal endorsement "Not claimed". According to Mr. Hussain, by several judicial pronouncements it has become the settled principle of law that "Not claimed" is good service. Therefore, this Court should exercise the jurisdiction vested under Section 482 of the Cr.P.C. not only to set aside the judgement impugned but also to reverse the order of acquittal passed by learned Trial Court, which would secure the right of the litigants to have speedy justice.

8. Mr. Asif Hussain in order to buttress his point relied upon a decision pronounced in the case of **PIGOT VS. ALL MUHAMMAD MONDAL** reported in **AIR 1921 Cal 30** wherein Their Lordships held:-

“Although the Criminal Procedure Code does not contain a provision corresponding to Section 151 of the Civil Procedure Code, yet the inherent power of Courts is in no sense restricted in application of civil cases; it is equally applicable to criminal matters. The power is not capriciously or arbitrarily exercised; it is exercised ex debita justitiae to do that real and substantial justice for the administration of which alone Courts exist; but the Court, in the exercise of such inherent power, must be careful to see that its decision is based on sound general principles and is not in conflict with them or with the intentions of the Legislature as indicated in statutory provisions.”

9. In **MADHU LIMAI VS. STATE OF MAHARASHTRA** reported in **AIR 1978 SC 47** the Hon’ble Supreme Court laid down the principles in relation to the exercise of inherent power of the High Court in the following manner:-

“At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions:-

- (1) That the power is not to be restored to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;*
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice;*
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”*

10. Section 482 of Code of Criminal Procedure says:-

“482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

11. The judgement pronounced in *Pigot (supra)*, in my humble opinion is of no help to Mr. Asif Hussain, learned Advocate for the Opposite Party, rather the principle of law laid down in the said judgement is akin to the principle laid down under Section 482 of the Criminal Procedure Code, 1973.

12. In view of the statutory mandate expounded under Sub-Section 3 of Section 401 of Criminal Procedure Code the impugned judgement cannot be allowed to remain in force. Under the Code of Criminal Procedure specific provision is there to prefer appeal against the order of acquittal under Section 378. Therefore, in view of the judgement pronounced in the case of *Madhu Limai (supra)* there is no room for this Court to invoke the inherent jurisdiction to consider the order of acquittal passed by learned Trial Court, while dealing with an application under Section 482 of the Cr.P.C. challenging the legality of another judgement.

13. While acknowledging the constitutional right of the litigants to have speedy justice, Court should not and cannot pass any order that runs counter to the intention of the legislature as reflected in statutory provision. However, when it is found that the Opposite

Party/complainant was prosecuting with due diligence with another prosecution the benefit of Section 470 of Criminal Procedure Code may be extended.

14. Section 470 of Criminal Procedure Code says:-

“470. Exclusion of time in certain cases.

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded: Provided that no such exclusion shall be made unless the prosecution relates to the same facts' and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

1. Ins. by Act 45 of 1978, s. 33 (w. e. f. 12- 12- 1978).

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.
Explanation.- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the

consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender-

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.”

15. Therefore, while refusing to imbibe myself with the argument of Mr. Hussain, I am inclined to give liberty to the Opposite Party No. 1, if any application is filed under Section 378 of the Criminal Procedure Code before the appropriate Court having jurisdiction, challenging the order of acquittal within 30 days from this day in that event learned Appellate Court shall consider the application for appeal keeping in mind the provision of Section 470 of the Criminal Procedure Code.
16. With the aforesaid observation the criminal revision is disposed of. Applications pending, if any, stands disposed of. Interim order stands vacated.
17. Let a copy of this judgement be sent to learned Trial Court for information and taking necessary action.
18. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)