

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.R. 340 Of 2020

K. Balasubramanian @ Balasbramanian Kesavan

Versus

The State of West Bengal & Anr.

For the petitioner : Mr. Phiroze Edulji
Mr. Kaushik Kundu

For the Opposite Party No. 2 : Mr. Sandipan Ganguly
Mr. Ayan Bhattacharya
Mr. Md. Zohaib Rauf
Mr. Sharequl Haque
Mr. Aditya Ratan Tiwary
Mr. Amitab Rata Haji

Lastly heard on : 19.02.2021

Judgment on : 08.03.2021

JAY SENGUPTA, J:

1. This is an application challenging an order dated 03.12.2019 passed by the learned Metropolitan Magistrate, 8th Court, Calcutta in Case No. C/31302/2009 under Section 138 of the Negotiable Instruments Act, thereby rejecting the petitioner's application under Section 91 of the Code.

2. Learned senior counsel appearing on behalf of the petitioner

submitted as follows. The petitioner was the accused in this case. The complainant/opposite party had filed the present complaint case, *inter alia*, on the allegations that despite receiving some payments for supply of Iron Ore Fines, the accused failed to supply the same and in part discharge of existing liability towards the complainant company, issued the cheque in question, but the same was dishonoured. First, the accused actually supplied the goods that he was supposed to supply. It was the petitioner's further case that the cheque in question was forcibly taken by the complainant. Although, the issue of forcibly taking of the cheque was mentioned during examination on the accused under Section 313 of the Code, the details of the supply of goods were not referred to. However, one defence was not incompatible with the other. Acting in good faith, the accused made an application under the Right to Information Act in 2017 for obtaining information about contemporaneous documents for the supply of goods in question from the concerned Customs and Central Excise Authority of Andhra Pradesh. This was because the accused had misplaced the receipt/challan that was issued to him for the said supply of goods. Copies of such receipt or challan and/or any contemporaneous documents for the supply of goods were supposed to be there with the said authority. However, no information was furnished to the accused on the ground that it pertained to trade related transactions between private parties. This compelled the accused to make an application before the learned Trial Court under Section 91 of the Code praying for a direction upon the Joint Commissioner of Customs, Krishnapatnam Customs House, KAPC Building, Krishnapatnam Port, Nellore District, Andhra Pradesh to produce the concerned Shipping

Bill No. 151/08-09 dated 10.12.2008 and the Proforma Invoice No. SOPL/CNBM/002 dated 08.12.2008 along with the related contract copies submitted by M/S. Steer Overseas Pvt. Ltd. The proper stage at which Section 91 of the Code could have been invoked by the accused was the stage at which the petitioner tried to invoke the same. As was held by the Hon'ble Apex Court in State of Orissa vs. Debendra Nath Padhi, AIR 2005 SC 359, insofar as the accused was concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. Quite commensurately, the petitioner applied for relief under Section 91 of the Code after the examination of the accused under Section 313 of the Code. Since the documents regarding supply of goods were capable of disproving the purported consideration behind the issuance of the cheque in question, it was desirable that efforts be made to procure such document. It was pertinent to mention that the complaint case started by the petitioner regarding forcible taking of the cheque by the present complainant ended in an acquittal. It was reiterated that the stand taken about the taking away of the cheque did not militate against the petitioner's prime defence in the present case that the goods in question were actually supplied. Furthermore, from a careful reading of the order sheet, it would appear that the petitioner was hardly responsible for any delay caused in the impugned proceeding.

3. Learned senior counsel appearing on behalf of the complainant/opposite party submitted as follows. As would be evident from the earlier complaint case started at the behest of the present petitioner and

from the examination of the accused under Section 313 of the Code, the issue of supply of goods was not disclosed by the petitioner earlier ever. The main plank on which the accused petitioner relied was that the cheque was taken away forcibly. It was germane to mention that acquittal of the accused in the said case started by the petitioner was not challenged. Although, the question of invoking Section 91 of the Code might ordinarily be available to the accused at the stage of defence, nothing stopped the accused from making an application at an earlier stage or at least, from specifically taking up the issue during the examination under Section 313 of the Code. Therefore, this application could only be treated as dilatory tactic to somehow delay the inevitable. The ratio of Debendra Nath Padhi (supra) is distinguishable in the present facts inasmuch as here it was not desirable that an application be allowed under Section 91 of the Code.

4. I heard the submissions of the learned counsels appearing on behalf of the petitioner and the complainant/opposite party and perused the revision petition and the affidavits filed in this case.

5. It appears that the documents regarding supply of goods strike at the root of the matter inasmuch as if such documents are proved then the purported consideration behind the issuance of cheque would get diluted. Therefore, it cannot be said that it is not desirable to have such documents produced during trial.

6. It is not that the petitioner tried to get the necessary information about the supply of goods for the first time while making an application under Section 91 before the learned Trial Court. The petitioner's case is that

he had misplaced the documents regarding the supply of goods and copies of the same were available with the concerned Customs and Central Excise Authority, Andhra Pradesh. The petitioner made an application under the Right to Information Act for obtaining such information from the concerned authority in 2017. But, the same was refused.

7. An accused can have several defence in a case. Some may even be in the alternative. The fact that the goods in question were supplied and, therefore, there is no consideration behind the issuance of cheque is not necessarily contradictory to the other defence already disclosed by the petitioner that the cheque in question was forcibly taken by the complainant.

8. Moreover, the Hon'ble Apex Court has clearly laid down, in the case of Debendra Nath Padhi (supra), that ordinarily the right to invoke Section 91 of the Code would be available to an accused only at the stage of defence. Therefore, even on this count, the petitioner cannot be faulted in making an application under Section 91 of the Code.

9. The accused is entitled to a fair trial. This cannot be sacrificed at the altar of expeditious disposal.

10. However, it also has to be taken into account that the proceeding is not unnecessarily protracted and is concluded at the earliest.

11. In view of the above and in the interest of justice, I set aside and reverse the impugned order and direct the learned Trial Court to issue necessary order, as per Section 91 of the Code, in terms of the prayer made

by the petitioner. After trying to ensure a proper response in respect of the said application, the learned Trial Court shall proceed with the trial from the stage of defence and conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties.

12. With these observations, the revisional application and the connected application are disposed of.

13. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J)

P. Adak