

06-12-2022
Subha
Item no.23
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 776 of 2021

In the matter of : **Signet Media Services Pvt. Ltd. & ors.**petitioners.

In Re : An application under Section 401 read with Section 397 of the Code of Criminal Procedure.

Mr. Subhabrata Datta
Ms. Debjani Roy Choudhuri
Mr. Aranya Saha
.....for the petitioners.

Mr. Sandipan Ganguly, Sr. Advocate
Mr. Dipanjan Dutt
Mr. Tanmoy Roy
....for the opposite party.

The present revisional application has been preferred challenging the order dated February 21, 2017 passed by the learned Chief Metropolitan Magistrate, Calcutta as also the subsequent orders passed by the learned Metropolitan Magistrate, 15th Court, Calcutta in connection with Complaint Case No. 17228 of 2017 under Sections 138 read with Section 141 of the Negotiable Instruments Act, 1881.

Mr. Dutta, learned advocate appearing for the petitioners submits that the present case was initiated in utter disregard of the provisions of law. To that effect, learned advocate submits that the constituted attorney who filed the complaint on behalf of M/s. Asha Communication was not empowered to continue with the case in view of the fact that the proprietress of M/s. Asha Communication namely, Smt. Mahua Lahiri expired during the pendency of the proceedings.

Learned advocate submits that the factum of death of the proprietress was not informed to the court and orders were passed by the learned Metropolitan Magistrate in respect of the issuance of summons/warrant of arrest and there was a progress in the proceedings before the learned trial court.

Learned advocate submits that because of the warrant of arrest, one of the accused was arrested and was detained for a night and subsequently he was produced before the court.

Additionally, it has been submitted that if the allegations made in the petition of complaint is accepted in its entirety, the same also do not make out a case for the petitioners to face trial in a court of law.

Mr. Ganguly, learned senior advocate appearing on behalf of the complainant submitted that at the relevant time when the complaint was filed before the learned Chief Metropolitan Magistrate, Calcutta, the proprietress, Mahua Lahiri was alive.

It is a fact that during the pendency of the proceedings, she has expired. It has been stressed that mere death of the complainant do not automatically terminate the proceedings.

To that effect, learned advocate has drawn the attention of this court to the provisions of Section 256 of the Code of Criminal Procedure as well as Section 302 of the Code of Criminal Procedure.

Learned advocate has relied upon the judgement of the Hon'ble Supreme Court in the case of Jimmy Jahangir Madan –Vs. – Bolly Cariyappa Hindley (Dead) By LR's. Reported in (2004) 12 SCC 509; Chand Devi Daga & Ors. –Vs.– Manju K. Humatani & Ors.

Reported in (2018) 1 SCC 71 and Balasaheb K. Thackeray & Anr. –vs– Venkat alias Babru, S/o Wamanrao reported in (2006) 5 SCC 530.

Both the learned advocates relied on paragraph 13 of Chand Devi Daga & Anr. (supra) which is set out as follows:-

“13. This Court had the occasion to consider Sections 256 and 302 in Balasaheb K. Thackeray v. Venkat [Balasaheb K. Thackeray v. Venkat, (2006) 5 SCC 530 : (2006) 2 SCC (Cri) 630] . In the above case complaint was filed under Section 500 read with Section 34 IPC. A petition was filed under Section 482 of the 1973 Code against the order of issue of process in the High Court which was dismissed. SLP was filed in this Court in which notice was issued [Balasaheb K. Thackeray v. Venkat, SLP (Cri) No. 4367 of 2003, order dated 31-10-2003 (SC), wherein it was directed:“Issue notice. Mr Ravindra Keshavrao Adsure, learned counsel takes notice on behalf of Respondent 1 and seeks two weeks' time for filing counter-affidavit. Time prayed for is granted. One week's time thereafter is granted for rejoinder-affidavit. Stay of further proceedings.”] and during the pendency of the appeal it was noted that the complainant had died. It was contended that the complaint be dismissed on the ground that the complainant is dead. This Court in the above context referred to Sections 256 and 302. This Court repelled the argument of the appellant that complaint be dismissed on the ground that complainant had died. Following was held in paras 3 to 6: (SCC pp. 531-32)

“3. The learned counsel for the appellants with reference to Section 256 of the Code submitted that the complaint was to be dismissed on the ground of the death of the complainant. As noted above the learned counsel for Respondent 1's legal heirs submitted that the legal heirs of the complainant shall file an application for permission to prosecute and, therefore, the complaint still survives consideration.

4. At this juncture it is relevant to take note of what has been

stated by this Court earlier on the principles applicable. In *Ashwin Nanubhai Vyas v. State of Maharashtra* [*Ashwin Nanubhai Vyas v. State of Maharashtra*, AIR 1967 SC 983 : 1967 Cri LJ 943] with reference to Section 495 of the Code of Criminal Procedure, 1898 (hereinafter referred to as “the old Code”) it was held that the Magistrate had the power to permit a relative to act as the complainant to continue the prosecution. In *Jimmy Jahangir Madan v. Bolly Cariyappa Hindley* [*Jimmy Jahangir Madan v. Bolly Cariyappa Hindley*, (2004) 12 SCC 509 : 2004 SCC (Cri) Supp 317] after referring to *Ashwin* case [*Ashwin Nanubhai Vyas v. State of Maharashtra*, AIR 1967 SC 983 : 1967 Cri LJ 943] it was held that heir of the complainant can be allowed to file a petition under Section 302 of the Code to continue the prosecution.

5. Section 302 of the Code reads as under:

‘302. Permission to conduct prosecution.—(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.’

6. To bring in application of Section 302 of the Code, permission to conduct the prosecution has to be obtained from the Magistrate inquiring into or trying a case. The Magistrate is empowered to permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person other than the Advocate General or the Government Advocate or a Public Prosecutor or Assistant Public Prosecutor shall be entitled

to do so without such permission.”

While the learned advocate for the complainant/opposite party emphasized that the substitution in a complaint case is possible, the learned advocate for the petitioners on the other hand contradicted such submission and stressed that the issue is not whether the accused company/complainant cannot be substituted but the issue remains as to whether the same being not informed to the trial court and obtaining orders are justified in the circumstances when there is no complainant in this case.

I have considered the submissions advanced by the learned Advocate for the petitioners and assessed the records of the case. From the records it transpires that till date the stage of examination under Section 251 of the Cr.P.C. has not been reached. The complainant Mahua Lahiri was alive when the cognizance of the offence was taken and the learned Magistrate was pleased to issue process/summons against the accused persons. Once the learned Magistrate was pleased to issue summons in respect of the accused persons the rest of the proceedings were restricted between the Court and the accused persons as it was duty of the Court to compel the appearance of an accused to appear before the Court of law.

On a consideration of the issue involved, I am of the opinion that the basic foundation is the definition of the complaint under Section 2(d) of the Code of Criminal Procedure and in cases under the Negotiable Instruments Act, it is the holder in due course of the cheque who has got the right to file the case.

The settled principles of law empowers the complainant to

file a substitution petition at any stage of the case.

Accordingly on this issue the proceedings cannot be quashed.

So far as the other issues are concerned, relating to the provisions of Section 141 of the N. I. Act., records reflect that the allegations are that the petitioner nos. 2 & 3 happen to be the authorized signatories and Director of the accused company.

There is nothing on record to show that the accused no. 3 was not a director at the relevant period of time or an authorized signatory of the accused company.

The learned advocate for the petitioners relied upon the judgement of the Hon'ble Supreme Court relating to vicarious liability as settled in *Sabitha Ramamurthy and another vs .R.B.S Channabasavaradhya* reported in (2006) 10 Supreme Court Cases 581 and *Mannalal Chamaria & Anr.- vs. State of West Bengal & anr.* Reported in (2014) 13 Supreme Court Cases 751.

In the petition of complaint in paragraph 2 it has been averred that the accused nos. 2 and 3 are the authorized signatories, directors of the accused no. 1 and are running their business at 104, Bidhannagar Road, Kolkata – 700067 along with other allegations.

This particular allegation/averment made in the petition of complaint distinguishes the distinctive role, which the accused nos. 2 and 3 are supposed to exercise, being Director of the company. As such, the allegations do suffice the necessary requirements for proceeding in a case under Sections 138 and 141 of the N. I. Act.

Having regard to the observations made above, I am of the opinion that there is no scope for interference in respect of the

proceedings pending against the petitioners.

The contentions so advanced relate to question of facts particularly with respect to the Directors who in course of the trial would by adducing evidence or by way of cross-examination would prove their innocence so far as their vicarious liability under Section 141 of the N. I. Act is concerned.

With the aforesaid observations, the present revisional application being CRR 776 of 2021 is disposed of

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]