

21.4.2023
10
SB
Ct. No.236

CRR 1978 of 2005
CRAN 2 of 2022

In the matter of : Calcutta Veneer Industries Ltd. & Anr.

Mr. Debrup Bhattacharyya
Mr. Subhasis Chakraborty
Mr. Amit Chowdhury
Ms. Susmita Kr. Singh for the petitioners

Ms. Manaswita Mukherjee ... amicus curiae

Heard Mr. Bhattacharyya, learned counsel representing the petitioners and Ms. Mukherjee, learned amicus curiae.

The application under consideration is filed by the petitioner seeking an order recalling the order dated 22.9.2022 by which the revisional application was disposed of.

Briefly stated, the petitioner no. 2 the Managing Director of the Company, Calcutta Veneer Industries Limited issued a cheque in discharge of an otherwise legally enforceable liability on 30.9. 1996 for a sum of Rs. 3 lakhs which was not honoured by the banker and the drawee of the cheque initiated a proceeding under Section 138 of the N.I. Act. Learned 13th Court of Metropolitan Magistrate, Calcutta decided the petition of complaint by recording an order of conviction directing the accused Sanjiban Chatterjee to undergo simple imprisonment for a month and to pay a fine of Rs.4,000/- and to pay a sum of Rs. 3,50,000/- as compensation to the complainant company.

The petitioners challenged the said order in Criminal Appeal No. 63 of 2004 before the learned 7th Judge, F.T.C. Kolkata but failed to taste success. Challenging the order of the learned Appellate Court, the revisional application was preferred before this Hon'ble Court and the revisional application was dismissed by the order dated 22.9.2022.

In the meantime, the parties settled their dispute amicably by making payment of Rs.3,50,000/-.

As neither of the parties appeared before the Court to apprise regarding the factum of settlement, the order dated 22.9.2022 was passed affirming the order passed by the learned Appellate Court. It goes without saying that when the parties have settled their disputes amicably out of Court, there should be no reason for the Court to stand in the way. But unfortunately, the case of the petitioners was never brought to the notice of the Court, and so the order dated 22.9.2022 would definitely pose serious prejudice to the petitioner if he has to suffer the imprisonment for a month.

Both Mr. Bhattacharyya, and Ms. Mukherjee relied upon the judgement of Hon'ble Apex Court in the case of ***Vishnu Agarwal vs. State of Uttar Pradesh and Another*** reported in (2011) 14 Supreme Court Cases 813 wherein Hon'ble Apex Court held that :-

"6. In our opinion, Section 362 cannot be considered in a rigid and over technical manner to defeat the ends of justice. As Brahaspati has observed :

"Kevalam Shastram Ashritya Na Kartavyo Vinirmayah Yuktiheeney Vichare tu Dharmahaani Prajayate"
which means:

"The Court should not give its decision based only on the letter of the law.

For if the decision is wholly unreasonable, injustice will follow."

In the case of ***Asit Kumar Kar vs. State of West Bengal & Others*** reported in (2009) 2 SCC 703 wherein Hon'ble Apex Court held that :-

"7. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in All Bengal Licensees Association v. Raghendra Singh & Ors. [2007 (11) SCC 374] cancelling certain licences was passed without giving opportunity of hearing to the persons who had been granted licences. In these

circumstances, we recall the directions in paragraph 40 of the aforesaid judgment. However, if anybody has a grievance against the grant of licences or in the policy of the State Government, he will be at liberty to challenge it in appropriate proceedings before the appropriate Court. The writ petitions are disposed of with these directions.”

In view of the aforesaid mandate of Hon'ble Apex Court, I am inclined to recall the order dated 22.9.2022.

In view of settlement arrived at by and between the parties which is otherwise lawful, I am inclined to interfere with the sentencing part of the order passed by the learned Trial Court and affirmed by the learned Appellate Court. The petitioner need not undergo the period of imprisonment as directed by the learned Trial Court duly affirmed by the learned Appellate Court. Sentence imposed upon the accused person is thus modified.

With this observation, the revisional application being CRR 1978 of 2005 along with recalling application being CRAN 2 of 2022 is disposed of. Copy of the order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)