

18.01.2023
S/L No.9
KS

C.R.R. 188 of 2021
Eskay Brothers Steels Ltd.
-Vs.-
State of West Bengal & Anr.

Mr. Sourav Chatterjee
Mr. Satadru Lahiri
Mr. A. P. Agarwala
..... For the Petitioner

Mr. P. K. Dutta
Md. Kutubuddin
Mr. Santanu Deb Roy
.....For the State

Report submitted by the State be kept with the record. Report reflects that the police authorities in spite of their best efforts could not trace out the opposite party no.2.

The main thrust of contention in this revisional application is that after issuance of process the accused appeared before the Court in a case under Sections 138/ 141 of the N.I. Act and, thereafter, filed an application for discharge and/or non-maintainability. Learned Magistrate on consideration of the same was of the opinion that the said Court was without any jurisdiction to consider an application for discharge/non-maintainability once the process has been issued. The opposite party no.2 preferred a revisional application before the Learned Sessions Judge being Criminal Revision No.124 of 2018. The Learned Addition Sessions Judge, 3rd Court, Howrah by an order dated 10.09.2020 was pleased to allow the said revisional application and set aside the order dated 19.09.2018 passed in Complaint Case No.172C of 2017 by the learned Judicial Magistrate, 6th Court, Howrah.

Learned advocate appearing for the petitioner submits that the learned Sessions Judge while exercising its jurisdiction exceeded its authority as well as the settled proposition of law that once the issuance of process is to be challenged the same is by way of Section 482 of the Code of Criminal Procedure as has been held by the Hon'ble Supreme Court in the case of *Adalat Prasad Vs. Rooplal Jindal & Ors.* reported in (2004) 7 SCC 338 and in the case of *Subramaniam Sethuraman Vs. State of Maharashtra & Anr.* reported in (2004) 13 SCC 324.

In view of the accepted proposition of law, I am of the opinion that the nature of the power exercised by the learned Sessions Judge while arriving at his finding is by way of exercising power under Section 482 of the Code of Criminal Procedure which the learned Sessions Court is not authorized while exercising his revisional jurisdiction. Additionally, I have perused the paragraphs 2, 3, 4, 5 and 6 in the petition of complaint which do prima facie make out a case for trial and on merits also I differ with the conclusion arrived at by the learned Sessions Court.

Accordingly, the order dated 10th September, 2020 passed by the learned Additional Sessions Judge, 3rd Court, Howrah in Criminal Revision No.124 of 2018 is hereby set aside. Learned Judicial Magistrate, 6th Court, Howrah is directed to issue notice upon the opposite party no.2/accused no.4 and proceed with the trial of the case.

Thus, C.R.R. 188 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)