

01.03.2023
BMJR
Court no.28
Item no.1

CRR 1034 of 2015
With
CRAN 2345 of 2015

Chandan Mitra
Versus
The IDBI Bank Limited and Ors.

Nobody appears for the parties.

Parties also not appeared on previous several dates.

In view of the aforesaid facts, nature of relief sought for and to avoid further delay, I am inclined to dispose of this matter on merit.

The petitioner has filed this application under Article 227 of the Constitution of India feeling aggrieved by the judgment and order dated 03.03.2015 passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta in Criminal Revision Case No. 152 of 2014 thereby the learned Judge dismissed the criminal revision and affirmed the order dated 29.08.2014 and 31.10.2014 passed in Complaint Case No. C/13023 of 2009 and directed to appear before the learned Court of 12th Metropolitan Magistrate, Calcutta wherein case is pending for non-

payment of cheque amounting to Rs. 2,06,125/- (Rupees two lakh six thousand one hundred twenty five only) drawn on UTI Bank Ltd. in connection with personal loan agreement no. 815675100040600.

It appears from the record that the complainant examined the prosecution witness. After completion of the evidence, date was fixed for examination of the accused under Section 313 of the Code of Criminal Procedure, when present petitioner fails to lead any defence witness on the date fixed.

It is the contention of the petitioner that he had not received any demand notice as the petitioner was out of India that is in, Mascot, Oman. Accordingly, petitioner filed an application under Section 311 of the Code of Criminal Procedure praying for examination of petitioner as defence witness along with documents but such prayer was rejected by the learned Trial Court on 29.08.2014 and after examination of the petitioner under Section 313 of the Cr.P.C. a date was fixed for delivery of judgment on 31.10.2014 but petitioner could not appear before the learned Court below on the date fixed for judgment. Consequently, Learned Magistrate issued warrant against the petitioner/accused to secure his attendance. Accordingly, petitioner filed revision application challenging such orders dated 29.08.2014 and 31.10.2014 before the Learned Chief Judge, City Sessions Court, Calcutta and the same was subsequently transferred to the Learned Additional District and Sessions Judge, 1st Fast Track Court at Bichar

Bhawan, Calcutta for disposal.

Upon hearing and consideration of the matter, the Learned Judge dismissed the application on contest and affirmed the orders dated 29.8.2014 and 31.10.2014. According to petitioner, judgment and order under challenge is totally incorrect, bad, illegal and perverse as because accused should have given opportunity to adduce defence evidence for proper adjudication of the case and for end of justice.

Considering the facts of the petitioner and on perusal of the record as well as impugned orders passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, this Court finds that the petitioner did not avail chance to adduce defence witness on the date fixed on 23rd July, 2013, 8th January, 2014 and 5th July, 2014 and on all those days petitioner sought for adjournment, hence the case was fixed for examination under Section 313 of the Code of Criminal Procedure and thereafter for hearing of argument of the parties. Petitioner came up with the application under section 311 of the Cr.P.C. but same was rejected on 29.08.2014. After closing of argument, a date was fixed for delivery of judgment on 31.10.2014 but on that day petitioner also fails to appear on the plea that he could not get reservation to come to Kolkata from Jaipur. Accordingly, the Learned Trial Court has issued a warrant of arrest to secure his attendance as such revision application filed by the petitioner before the Learned Court below.

The said revision application has been finally dismissed after affirming the said impugned orders under the grounds that the revision application is not maintainable under section 397 (2) of the Code of Criminal procedure and throughout the proceeding petitioner tried to delay the proceeding.

Petitioner fails to adduce defence witness on several dates fixed by the learned Trial Court and his intension to file application under Section 311 of the Code of Criminal Procedure is only appearing to drag the matter intentionally. It is not that the petitioner did not get opportunity to adduce defence witness but he had not availed. Petitioner also cross-examined the witnesses adduced by the opposite party no. 1. Furthermore, the rejection of application under section 311 of the Code of Criminal Procedure is an interlocutory order within the meaning of Section 397 (2) of the Code of Criminal Procedure as it does not decide any substantive right of litigating parties. Hence, no revision lies against such order.

I am relying on judgments of Supreme Court passed in :-

(1) Sethuraman Vs. Rajamanickam¹

Wherein the Apex Court observed that :-

“refusing to call the documents and rejecting the application under Section 311 Cr.P.C. are interlocutory orders as such, the revision against those orders was clearly barred under Section

¹

397 (2) of the Cr.P.C.”

(2) Swapan Kumar Chatterjee v. Central Bureau of Investigation², wherein the Apex Court observed that :-

“an application under Section 311 Cr.P.C. ought not to be allowed where:

- (a). the application has been filed as an abuse of the process of law;*
- (b). The prosecution’s evidence was closed long back;*
- (c). The reasons for non-examination of the witnesses earlier are not satisfactory.”*

Accordingly, I do not find any infirmity or illegality or error in the Judgment dated 03.03.2015 passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta in Criminal Revision Case No. 152 of 2014.

C.R.R. No. 1034 of 2015 and the connected application are, thus, disposed of with above observation without any order as to costs. Interim orders, if any, stand vacated.

The Concerned department is directed to communicate this order to the learned Trial Court immediately.

Photostat certified copy of this order, if applied for, is to be

given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J.)