

17.02.2023

Court No.04
Item No.07

CRR 1037 of 2015

**Bhanu Pratap Singh @ Bhanu Partap Singh
Vs.
The State of West Bengal.**

Ab

This criminal revision has been preferred at the behest of the applicant under Section 482 of the Code of Criminal Procedure with a prayer for quashing the proceeding being C.R. Case No. 200 of 2009 filed under Section 138 of the Negotiable Instruments Act pending before the Court of Additional Judicial Magistrate, Hooghly and with a further prayer for quashing all orders passed in connection with the case including the order dated 23rd February 2015.

No one is present on behalf of either of the parties.

The instant matter relates to administration of criminal justice. As held by the Hon'ble Supreme Court in case of **Madan Lal Kapoor vs. Rajiv Thapar and others**, reported in **(2007) 7 SCC 623** that a criminal matter cannot be dismissed for default or dismissed for non-prosecution rather it should be decided on merits.

So, the instant matter is taken up for disposal on merit.

The facts leading to filing of this criminal revision in short is that the petitioner in discharge of his debt on 25.3.2009 had issued one A/C Payee cheque bearing no. 702163 amounting to Rs. 120000/- drawn on State Bank of India, Bandel Branch, in favour of the complainant bank, namely, Hooghly Co-operative Credit Bank Limited. When the said cheque was presented for encashment, the same was dishonoured on account of insufficiency of funds. After that the complainant served a notice upon this petitioner demanding therein the amount due, which was duly received by this petitioner on 20.4.2009. As this petitioner did not make any payment, a case was initiated against him by the complainant under Section 138 of

the Negotiable Instruments Act.

Learned Chief Judicial Magistrate took cognizance of the offence and transferred the case to the Court of learned Additional Judicial Magistrate, Hooghly, for trial and disposal. After receiving of the summons from the learned trial court, this petitioner appeared before the Court and was granted bail. On 29.8.13, a plea of this petitioner was recorded under Section 251 of the Code of Criminal Procedure by explaining the substance of accusation to him to which this petitioner stated not guilty and claimed to be tried. As on subsequent dates, the petitioner was found absent, warrant of arrest was issued against him by the learned trial court. Thereafter, this petitioner preferred the instant application before this Court under Section 482 of the Code with a prayer for quashing the entire proceedings pending before the learned trial court on the ground that the learned trial court failed to appreciate the fact that the issuance of warrant of arrest involves interference with personal liberty of an individual and arrest and imprisonment means deprivation of the right of an individual. This petitioner has also taken a ground that the power of issuing warrant of arrest being discretionary must be exercised judiciously and with extreme care and caution by the learned trial court.

In this juncture, it is profitable to refer the observations of the Hon'ble Apex Court in case of **Rathish Babu Unnikrishnan vs. State (Govt. of NCT of Delhi) and another**, reported in **2022 SCC Online SC 513**. In the said case, the Court was hearing the criminal appeal against an order of the Delhi High Court that dismissed the appellant's application under Section 482 of the Code for quashing the summoning order issued on June 1, 2018 and the order framing notice on November 3, 2018. The orders were issued against the appellant under Section 138 of the Negotiable Instruments Act. In that case the complainant invested a substantial sum in the appellant's company and resulting transactions took place between the parties. Subsequently, it was arranged that the shares allotted to the complainant will be proportionately transferred to the appellant. One of the four cheques handed over by the appellant was

dishonoured by the bank due to insufficient funds. After that, the complaint under Section 138 of the Negotiable Instruments Act was filed leading to the summons against the appellant. The appellant in that case submitted that the criminal process can be issued only after satisfying the essential ingredients of the offence i.e. the dishonoured cheque received against legally enforced debt or liability as provided under Section 138 of the Negotiable Instruments Act. It was further submitted in that case on behalf of the appellant that since the ingredients constituting Section 138 is absent, the appellant was not liable to be prosecuted under the same.

The Hon'ble Court relying upon the judgment passed in case of **M/s. M.M.T.C. Ltd. vs. Medchl Chemicals and Pharma (P) Ltd and Anr.** and the catena of other judgments held that the burden of proving that there is no existing debt or liability is to be discharged in the trial.

On the question of legal presumption on the cheque issued in discharge of liability, the Apex Court observed that when the accused pleads for quashing a pre-trial stage, the legal presumption that supports the complaint cannot be disregarded. It was further held by the Hon'ble Court that without the trial court evaluating the evidence of both the parties, a detailed enquiry on the facts lodged towards legal presumption was not judicious.

It has been observed by the Hon'ble Apex Court in case of **Rathish Babu Unnikrishnan (supra)** at paragraph 17 inter alia that:

“The consequences of scutting the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had the opportunity to adduce evidence and the consequence then is that the proper forum i.e. the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut he presumption.”

It is also profitable to refer the observation of the Hon'ble Apex Court in case of **Hamida vs. Rashid alias Rasheed and others**, reported in **(2008) 1 SCC 474**. In that case the Hon'ble Apex Court observed, inter alia, that in spite of repeated pronouncements of this Court that inherent power under Section 482 of the Code should be exercised sparingly with circumspection in rare cases and that too when miscarriage of justice is done. In the above referred case, the Hon'ble Court observed at paragraph 13, inter alia, that the dockets of the High Courts are full and there is a long pendency of murder appeals in the High Court from which this case has arisen. Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under Section 482 Cr.PC at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure, as is the case here, or to delay the trial, which enable the accused to win over the witnesses by money or muscle power or they may become disinterested in giving evidence, ultimately resulting in miscarriage of justice.

In the landmark case being **State Haryana and Ors. v. Bhajan Lal & Ors.**, reported in **1992 Supp. (1) SCC 335**, a two Judges Bench of the Apex Court considered in detail the provisions of Section 482 and the power of the High Court to quash the criminal proceeding or FIR. The Supreme Court summarized the legal position by laying following guidelines to be followed by the High Courts in exercise of their inherent power to quash the criminal complaint.

- 1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- 2) Where the allegations in the first information report and other materials, if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except

under an order of a Magistrate within the purview of Section 155(2) of the Code.

- 3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- 4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- 7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In view of the observations of the Hon'ble Apex Court, I find that even though the inherent jurisdiction of the High Court under Section 482 is very wide, it has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the

tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone, courts exist.

A case was initiated against this petitioner under Section 138 of the Negotiable Instruments Act and record of plea of the petitioner under Section 251 of the Code was recorded by the trial court by explaining the substance of accusation to him to which he stated not guilty and claimed to be tried. Thereafter, this petitioner was directed to be present before the Court, but as on the subsequent dates fixed by the trial court this petitioner was found absent, the warrant of arrest was issued against him. Despite surrendering before the trial court this petitioner approached before this Court for quashing the proceeding being C.R. Case No. 200 of 2009 pending before that court.

From the grounds as taken by this petitioner in this petition, I find nothing so that the provisions of Section 482 of the Code can be invoked. Moreover, I find that inherent jurisdiction as per Section 482 of the Code is to be exercised sparingly, carefully and with caution.

In view of the above discussion, I find there is no merit in this petition and it is liable to be dismissed. Accordingly, the instant revisional application is dismissed on merit.

The trial court is directed to dispose of the case as expeditiously as possible preferably within three months from the date of communication of this order.

Let a copy of this order be sent to the learned Trial Court for information and necessary compliance.

(Prasenjit Biswas, J.)