

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3477 of 2019

Sanjay Chhajer

Vs

The State of West Bengal.

For the Petitioner

: Mr. Ayan Bhattacharjee,
Mr. Indrajit Adhikari,
Mr. Sharequl Haque.
Ms. Ritu Das.

For the State

: Mr. Arijit Ganguly.

Hearing Concluded on

: 23.11.2023

Judgment on

: 01.12.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the Judgment and Order dated August 8, 2019 passed by the Court of the Learned Chief Judge, City Sessions Court at Calcutta in Criminal Revision No. 127 of 2019 thereby affirming the Order dated January 11, 2019 passed by the Learned Metropolitan Magistrate, 16th Court at Calcutta in connection with CS/16088 of 2013 under Section 33C(1) of the Industrial Disputes Act, 1947.
2. The Petitioner states that, one Sri Kallol Chakraborty, Assistant Labour Commissioner, West Bengal had filed a petition of complaint under Section 33C(1) of the Industrial Disputes Act, 1947 (Act 14 of 1947) as amended by Section 18 of the Industrial Disputes W.B. Second Amendment) Act, 1980 (W.B. Act LVII of 1980) in the Court of Learned Chief Metropolitan Magistrate at Calcutta against M/s Advance Management Services Ltd.
3. On November 16, 2013 a report was received by the Learned Trial Magistrate in respect of service of summons against the accused company and on the basis of said report, Order of Attachment was issued against the accused company fixing the next date for Execution Return and Order of Attachment against the said accused company.
4. On January 11, 2019, a report was received by the Learned Trial Magistrate from Burrabazar Police Station wherein it was, inter alia,

contended that a major portion of 71, Canning Street (Bagri Market) is burnt due to a devastating fire incident on September 16, 2018 including the office and at present the scheduled shop/room is totally vacant and none is existing there.

5. The Learned Trial Magistrate vide impugned Order dated January 11, 2019 directed for issuing summon against the director of the accused company fixing the next date on March 26, 2019 for Service Return.
6. Being aggrieved by and dissatisfied with the Order dated January 11, 2019 passed by the Learned Trial Magistrate thereby issuing summons to the petitioner, the petitioner herein filed a revision petition being Cri. Rev. No. 127 of 2019 before the learned Chief Judge, City Sessions Court at Calcutta (hereinafter referred to as 'Learned Chief Judge') when after hearing, vide Judgment and Order dated August 8, 2019, the Learned Chief Judge was pleased to dismiss the same thereby affirming the judgment and order dated January 11, 2019 passed by the Learned Trial Magistrate.
7. Hence the revision.
8. The State is represented through **Mr. Arijit Ganguly, learned Advocate**, who has submitted a statement of facts submitted by the Labour Department Officer.
9. **Mr. Ayan Bhattacharjee, learned counsel for the petitioner** has relied upon the judgment in the case of ***State of West Bengal Vs Aspiring***

Engineers & Exporters Pvt. Ltd. & Ors. reported in **2008 (1) CHN pg. 165.**

10. The said judgment was placed before another bench of this Court in W.P. 13760(W) of 2008, wherein the Court **vide its order dated 05.06.2012** held:-

*“.....The judgment in the case of **Aspiring Engineers & Exporters Pvt. Ltd., (supra)**, It was not disputed by the learned Counsel, was rendered without taking into consideration Section 32 of the Industrial Disputes Act which provided as follows :-*

“Section 32: Offence by companies, etc.- Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.”

In the event the application pending before the Court below is allowed directing payment under Section 33C of the Industrial Disputes Act and in case payment is not made, the omission would amount to an offence punishable under Section 29 of the Industrial Disputes Act. In that eventuality Section 32 of the Industrial Disputes Act shall be attracted rendering the petitioner liable for penal consequences. It is, therefore, not possible to accept the submission that the writ petitioner can never be made liable for the dues of the workman who has presented the application under Section 33C(2) of the Industrial Disputes Act before the Labour Court.....”

11. **Section 29 of the Industrial Disputes Act, 1947, lays down:-**

“29. Penalty for breach of settlement or award.- Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the

Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.”

12. Section 32 of the Industrial Disputes Act, 1947, lays down:-

*“32. Offence by companies, etc.- Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), **every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.”***

- 13.** The contention of the petitioner that he was initially not made a party is not relevant at this stage **as the Trial Court proceeded against the director (petitioner) as per Section 32 of the Industrial Dispute Act on 11.01.2019.** It is on record that the petitioner has not denied being the director of the company and under Section 32 of the Industrial Disputes Act, 1947, the Magistrate is empowered to proceed against the petitioner/director.
- 14.** The Compensation order in this case was first passed by the First Labour Court, West Bengal in Case No. Comp. 33/2007 under Section 33C(2) of the Industrial Disputes Act, 1947.
- 15. Sixteen years have passed the workman here is running from pillar to post since 2007** to get the benefit lawfully due to him under a beneficial legislation, which the accused persons have been denying in spite of being liable under the act to pay the dues.

16. The legislation is a beneficial legislation, for the benefit of the workmen and not paying the compensation since 2007 is clearly an abuse of the process of law. The prayer of the petitioner that the case should have been filed is against the principle of natural justice.
17. **CRR 3477 of 2019 is thus dismissed.**
18. The order dated August 8, 2019 passed by the Court of the Learned Chief Judge, City Sessions Court at Calcutta in Criminal Revision No. 127 of 2019 thereby affirming the Order dated January 11, 2019 passed by the Learned Metropolitan Magistrate, 16th Court at Calcutta in connection with CS/16088 of 2013 under Section 33C(1) of the Industrial Disputes Act, 1947 **is affirmed. Trial Court is directed to dispose of the case within 3 months from the date of this order.**
19. There will be no order as to costs.
20. All connected Applications, if any, stand disposed of.
21. Interim order, if any, stands vacated.
22. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
23. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)