

D/L396
22.11.2023
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C.R.R.4260 of 2023

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973;

Sri Sanjay Prakash Bansal
Versus
Anand Kumar Agarwala

Mr. Sabir Ahmed
Mr. T. Ahmed
Mr. Dhiman Banerjee
Mr. Soham Chakraborty
Ms. Suman Biswas.
...for the petitioners.

Mr. Kushagra Shah
Ms. R. Banerjee.
...for the opposite party.

The subject matter of challenge is the order dated 16.06.2023.

Learned advocate appearing for the petitioner submits that the learned Magistrate has erroneously passed the impugned order without appreciating that on 11.01.2023 insolvency resolution process under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 was filed against the petitioners by the UCO Bank and filing of such application resulted in interim moratorium declared in Section 96 of the Insolvency and Bankruptcy Code, 2016 which prohibits continuation of any pending proceedings against the petitioner. Learned Magistrate considered such prayer of the present petitioner.

Petitioner in order to substantiate his argument relied upon the decision in Vijay Kumar Ghai Vs. Pritpal Singh Babbar

reported in 2022 SCC OnLine P&H 1672 and Sheetal Gupta Vs. National Spot Exchange Limited and Anr. (Criminal Application No.1151 of 2022) of the Bombay High Court.

I have considered the prayers so advanced before the learned Magistrate for staying the proceedings.

Mr. Shah, learned advocate appearing for the complainant submits that the law on the issue has been decided by Hon'ble Apex Court in the cases of P Mohan Raj & Ors. Vs. Shah Brothers Ispat Private Limited (2021) 6 SCC 258 and Ajay Kumar Radheysham Goenka Vs. Tourism Finance Corporation of India Ltd. 2023 SCC OnLine SC 266

Having regard to the fact that so far as the present proceeding is concerned and the views having already been expressed on the subject by the Hon'ble Apex Court which were subsequent opinion in relation to the judgements relied upon by the petitioner, I hold that so far as the individual is concerned in such a manner the proceedings cannot be stayed until and unless in a trial of a proceeding an individual is able to bring out in evidence that in spite of due diligence he is not in a position to remit the amount covered by the dishonoured cheque. Although the issue raised is in the form of question of law but the basis of such foundation requires facts to be placed before the learned trial court.

Having considered the same, I am not inclined to interfere at this stage.

Petitioner would be at liberty to take out the issues in course of the trial.

With the aforesaid observations, CRR 4260 of 2023 is disposed of.

Pending connected application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)