



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.136/2023

Jineshkumar Nanhelal Jain (In Jail) .Vs. M/s. Ganesh Dal Industries

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D. R. Punekar, Advocate for applicant.
None for the non applicant.

CORAM : ANIL L. PANSARE, J.
ARGUMENTS WERE HEARD ON : 18.10.2023
ORDER PRONOUNCED ON : 20.10.2023

Heard.

The legality and correctness of order dated 28.06.2023 passed by Additional Sessions Court, Nagpur in Criminal Appeal No.311/2019, has been questioned by the applicant. The applicant-original accused has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (Hereinafter referred to as the "Act of 1881"), vide judgment and order dated 18.10.2019 passed by the Additional Chief Judicial Magistrate, Nagpur in Summary Criminal Case No. 24306/2017. The said order was assailed before the Sessions Court, which has been dismissed.

A strange argument has been made by the counsel for the applicant that the Judicial Magistrate First Class and Additional Chief Judicial Magistrate are not empowered to take cognizance of the complaint made under the Act of 1881. According to the counsel for the applicant, Article 236 of the Constitution of India defines the expression, "District Judge" and not the "Additional Chief Judicial Magistrate" or the

“Judicial Magistrate First Class”. He has invited my attention to the aforesaid definition to contend that the expression “District Judge” includes judge of City Civil Court, Additional District Judge, Joint District Judge, etc. but not the Additional Chief Judicial Magistrate or the Judicial Magistrate First Class. Accordingly, he contends that the Additional Chief Judicial Magistrate could not have taken cognizance of the offence.

The argument suffers from ignorance of the other provisions of the Constitution as also the provisions of the Act of 1881. In Clause (b) of Article 236, the expression “Judicial Service” has been defined to mean a service consists exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge. Thus, the Judicial Service includes posts which are inferior to the post of District Judge. These posts are the posts of Senior Division/ Additional Chief Judicial Magistrate, Junior Division/Judicial Magistrate First class, etc.

Section 11 of the Criminal Procedure Code, 1973 provides that in every District (not being the Metropolitan area), there shall be established as many Courts of Judicial Magistrate of First Class and of the Second Class and at such places as the State Government may, after consultation with the High Court, by notification specify. Section 12 of the Code deals with the appointments of the Chief Judicial Magistrate and Additional Chief Judicial Magistrate.

Section 142(1) (c) of the Act of 1881 provides that no Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate First Class shall try any offence punishable under Section 138 of the Act of 1881.

The aforesaid provisions clearly provide for appointment of the posts of Chief Judicial Magistrate, Additional Chief Judicial Magistrate, Judicial Magistrate First Class, etc. Section 142(1) of the Act of 1881 further provides that the offence under Section 138 of the Act of 1881 are to be tried by the Judicial Magistrate First Class or the Chief Judicial Magistrate including the Additional Chief Judicial Magistrate.

There is, thus, no substance in the contention put forth by the petitioner.

The next limb of the argument is that the learned trial Court has ignored the pendency of the civil suit between the parties. According to the learned counsel, Regular Civil Suit No.1366/2007 is pending before the Civil Court. The subject matter of the suit and the complaint is the same and, therefore, both the cases ought to have been tried by one Court.

This argument is also devoid of merit. The applicant must be mindful of the fact that for the convenience of the litigants, Special Courts have been constituted to exclusively try the offences punishable under Section 138 of the Act of 1881.

In the circumstances, the expectation of the applicant that the same Court should have tried both the cases, is contrary to the scheme of constituting the special Courts for timely disposal of the complaints filed under Section 138 of the Act of 1881.

So far as the facts are concerned, it appears that the applicant-accused and non applicant-complainant were involved in the business of pulses. The applicant had purchased Chana dal on credit from the non applicant. The total amount of purchase of pulses was Rs.1,81,264/-. The applicant has issued

cheque bearing No.612591 dated 30.06.2017, for Rs.59,340/- towards part discharge of liability. The cheque was presented for encashment but was dishonoured and returned back with remark, "Funds Insufficient". The non applicant, after complying with the requisite provisions of the Act of 1881, had filed the complaint under Section 138 of the Act of 1881. The parties led evidence. The trial Court, having found merit in the case has convicted the applicant. The appellate Court has upheld the said finding. This concurrent finding has been challenged on the grounds stated earlier.

The counsel for the applicant failed to point out any perversity or illegality in the orders passed by the Courts below and, therefore, I am not inclined to interfere with the aforesaid finding in the revisional jurisdiction. The revision is, therefore, dismissed.

(Anil L. Pansare, J.)