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C.R.R.454 of 2024

In Re: A petition under Section 482 of the Code of Criminal Procedure,
1973;

Nirmal Chakraborty @ Nirmal Chandra Chakraborty
Versus
State of West Bengal and another

Mr. Praveen Kapur
Ms. Soumi Guha Thakura.
...for the petitioner.

Petitioner has by way of invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure prayed for recall of the order 18th January, 2023 passed in CRR188 of 2021.

Records reflect that at the available address in the petition of complaint services were attempted to be effected not only through the private party who approached this Court but also through the police authorities by engaging learned advocate of the State. Reports were submitted by the police authorities. Thereafter, the revisional application was finally taken up for hearing as the revisional application was filed in the year 2021 and the same was disposed of on 18th January, 2023. Primarily, it reflects that the accused persons challenged the maintainability of the continuance of the proceedings by filing an application before the learned Magistrate. The learned Magistrate refused to accept such contentions and thereafter against the said order the learned sessions court was approached. The learned sessions court by exercising its jurisdiction under Section 397 of the Code of Criminal

Procedure set aside such order of issuance of process.

This Court after relying upon the judgments of the Hon'ble Supreme Court was of the opinion that the nature of power exercised by the sessions court was under Section 482 of the Code of Criminal Procedure which the sessions court was not empowered to exercise.

Learned advocate appearing for the petitioner submits that since he did not have any opportunity as the service was effected in a wrong address, he is entitled to an audience before this Court. To that effect, learned advocate relied upon the judgment of the Hon'ble Apex Court in *Dexaben Vs. The State of Gujarat and others* reported in 2022 Live Law (SC) 642. Attention of the Court was drawn to paragraph 21 of the judgment which is set out as follows:

"21. In *Krishna Kumar Pandey* (supra) this Court referred with approval, to the judgment of this Court in *State of Punjab V. Davinder Pal Singh Bhullar and Ors.* where this Court held that the High Court was not denuded of inherent power to recall a judgment and/or order which was without given an opportunity of hearing to a party affected by the order or where an order was obtained by abusing the process of Court which would really amount to its being without jurisdiction. Inherent powers can be exercised to recall such orders."

Learned advocate has also relied upon the judgment of *National Small Industries Corporation Limited Vs. Harmeet Singh*

Paintal and another reported in (2010) 3 SCC 330.

So far as the first judgment which has been relied upon by the petitioner is concerned, I am of the view that this Court has gone into the merits of the case and decided the issue on procedural aspect particularly with the authority of the sessions court to decide regarding the question of issuance of process when the learned Magistrate had no authority to entertain an application for non-maintainability of discharging/dropping of the proceedings in a case which relates to summons procedure. So far as the second judgment is concerned, which has been relied upon, learned advocate has drawn the attention of the Court to the allegations in the petition of complaint and submitted that the allegations therein fails to make out an offence as the petitioner has been described as Manager/Accountant and the petitioner has left the company.

I have considered such submissions of the learned advocate appearing for the petitioner. I find that the allegations in the petition of complaint particularly in paragraphs 3 and 4 are sufficient for issuance of process for holding a person vicariously liable under Section 141 of the Negotiable Instruments Act. The case was initiated at the behest of the complainant. Still at this stage after 6/7 years the issue relating to appearance is continuing before the learned trial court.

Having considered the same, and the fact that prima facie there are allegations which calls for the petitioner to face trial under Section 141 of the Negotiable Instruments Act, I am of the view that the totality of the circumstances do not call for any

interference, far less the fact of recalling of the earlier order which would be revealed from the observations made earlier.

Accordingly, CRR 454 of 2024 is dismissed.

Pending connected application, if any, is consequently dismissed.

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.)