IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Before: Hon'ble Justice Sugato Majumdar

CRA 379 of 2019

Sashikant Todi
Vs.
State of West Bengal & Ors.

For the Appellant	:	Mr. Satadru Lahiri Mr. Syed Wasim Faruque
For the O. P. Nos. 2 & 3	:	Mr. Avik Ghatak Mr. Saibal Krishna Dasgupta Mr. Sannidhya Dutta
Hearing concluded on	:	10.05.2024
Judgment on	:	16.05.2024

Sugato Majumdar, J.:-

The instant criminal appeal is filed against the Judgment and Order dated 16th February, 2019 passed by the Learned Metropolitan Magistrate, 11th Court, Calcutta in T.R. Case No.217/2003 arising out of Complaint Case No.C/781/2003 under Section 138/141 of the Negotiable Instruments Act, 1881, whereby the accused persons were acquitted under Section 255 (1) of the Code of Criminal Procedure, 1973.

The original criminal prosecution was initiated by the present Appellant against Siddharth Automobiles Limited, Deepak Loyalka and S. M. Bedi under Section 138/141 of the Negotiable Instruments Act, 1881. The Accused No.1 company issued two account payee cheques bearing number 162718 dated 15/04/2003 and bearing number 162719 dated 15/05/2003, each for Rs.2,50,000/- in discharge of legal debt and liability. Both the cheques were drawn on Federal Bank Ltd., Elgin Road branch. The cheques were drawn in favor of the present Appellant. Both the cheques were dishonored for insufficiency of fund. The Appellant issued demand notice asking to pay the money but money covered under the cheques was not paid. On being constrained, prosecution was launched under section 138/141 of the Negotiable Instruments Act, 1881.

The Trial Court acquitted the accused persons in terms of the impugned judgment. The Trial Court was too much carried with the argument that company should be made a party. It was observed by the Trial Court that under Section 141 of the Negotiable Instruments Act, 1881 arraigning a company as an accused is imperative; the case against the company was withdrawn by the complainant; so, in absence of the company, the accused no. 2, being the Managing Director having vicarious liability cannot be brought in the dragnet of prosecution. On that premises, the order of acquittal was passed.

Mr. Lahiri, arguing for the Appellant, invited my attention to an application dated 18/11/2009 filed by the present Appellant in the trial court. According to him, the company was made party from the very beginning. Since the company was not appearing, the application dated 18/11/2009 was filed with a prayer that the prosecution against the company may be filed for the present. The Trial Court misconstrued the application and in terms of the Order 21/04/2010 passed an Order of withdrawal of the complaint against the Accused no. 1, namely, the company. According to Mr. Lahiri, the trial court acquitted the accused and considered the matter from a different angle without appreciating the actual facts of the case.

Mr. Ghatak, the Learned Counsel appearing for the Respondents firstly argued that although from the very inception, company was a party, prosecution was subsequently withdrawn against the company, offending the provision of Section 141 of the Negotiable Instruments Act, 1881. He further submitted that similar petition for withdrawal was also filed against the Accused no. 3 which was allowed. Therefore, according to him, there was no error on the part of the trial court in passing the impugned judgment.

Secondly, it was argued by Mr. Ghatak that the Appellant should have taken steps for modification of the order dated 21/04/2010 whereby the complaint was withdrawn against the company. The Appellant slept with his right. Now that order cannot be challenged in appeal at this stage. In other words, the Learned Counsel for the Respondent supported the impugned judgment.

There is no cavil that the company was accused no. 1. The original application under Section 138 was filed in compliance with and in consonance with the provision of Section 141 of the Negotiable Instruments Act, 1881. Subsequently, an application was filed by the Appellant, in view of the non-appearance of the company prosecution, praying that prosecution may be continued against the other accused persons in absence of the accused no. 1, namely, the company itself. In nutshell, an application under Section 299 of the Code of Criminal Procedure, 1973 was filed by the Appellant. The trial court misconstrued the content of the application and mechanically passed an order of withdrawal against the Accused no. 1, namely, the company. The trial court passed the impugned judgment on the premises that prosecution was withdrawn against the company. The complaint was not decided on merit. The trial court failed to consider the issue that the Appellant invoked the provision of Section 299 of the Code of Criminal procedure for expeditious trial but the Court misconstrued the petition. Withdrawal of prosecution against the company is a product of the Court not a prayer of the Appellant. The Appellant cannot suffer adversely for fault of a Court. Error of a Court should not lacerate the face of the Appellant in aberration of justice. The High Court can act *ex debito justitiae.* In **Popular Muthiah v. State,[(2006) 7 SCC 296]** it was observed by the Supreme Court of India that the High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters. It was further observed:

> "27.While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefor is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. "

It is a fit case, therefore, that this Court should act *ex debito justitiae* to do real and substantial justice to the Appellant.

In nutshell, the instant appeal is allowed. The impugned Judgment and Order dated 16th February, 2019 passed by the Learned Metropolitan Magistrate, 11th Court, Calcutta in T.R. Case No.217/2003 arising out of Complaint Case No. C/781/2003 under Section 138/141 of the Negotiable Instruments Act, 1881, is hereby set aside. The Trial Court shall hear argument both on merit and maintainability issue afresh and pass appropriate judgment. The Trial Court is expected to dispose of the original complaint case within three months from the date of receiving this order.

The instant criminal appeal stands disposed of.

L.C.R may be returned forthwith.

(Sugato Majumdar, J.)