16.04.2024
Sl. No.: 7
Court No.30
BM

CRR 2418 of 2019

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IA No.: CRAN 2 of 2020

(Old No.: CRAN 1179 of 2020)

Basudev Saha

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Rajib Ray,
Ms. Oishanee Ghosh.

For the Opposite Parties : None.

1. The present revision has been preferred praying for quashing of proceedings in case CS/93319 of 2018 under Sections 138 and 141 of the Negotiable Instruments Act, 1881 as amended upto date pending before the learned 19th Metropolitan Magistrate at Calcutta and all orders passed therein including order dated 12.10.2018 and 13.11.2018.

2. A written note of argument has been filed on behalf of the petitioner.

3. In spite of due service there is no representation on behalf of the opposite party no.2.

4. The petitioner's case is that on 12.10.2018 the opposite party no.2 filed a complaint case under Sections 138 and 141 of the Negotiable Instrument Act, 1881 in the court of the learned Chief Metropolitan Magistrate at Calcutta, being Complaint Case No. CS/93319 of 2018 against the petitioner and others alleging that the petitioner and other accused persons are the Directors and authorized signatory of Upahar Agro Industries Limited i.e. the accused no.1 and the petitioner is the person in charge and/or responsible for the day to day functioning of the accused no.1 and in discharge of existing legal liabilities, the authorized representative of the accused company issued four account payee cheques being Nos.(i) 330183 dated 30.06.2018 amounting to Rs.6,00,000/- (ii) 330180 dated 28.07.2018 amounting to Rs.10,00,000/- (iii) 330182 dated 06.07.2018 amounting to Rs.8,40,000/- (iv) 330181 dated 14.07.2018 amounting to Rs.9,36,000/- all drawn on Axis Bank, Ganesh Chandra Avenue, Kolkata-700013 in favour of the opposite party no.2 who presented the said cheques with his banker Union Bank of India but the same were returned dishonored with the remarks "Account Closed" and thereafter the opposite party no.2 issued a demand notice dated 04.09.2018 through his learned advocate for the payment of the cheques amount which was duly dispatched on 04.09.2018 but neither the acknowledgement due card nor the undelivered cover has returned and the petitioner and other accused persons in spite of service of the above notice failed and neglected to pay the said cheques amount and committed an offence under Section 138 of the Negotiable Instrument Act, 1881 as amended upto date and prayed for issuance of process under Sections 138 and 141 of the Negotiable Instrument Act, 1881 as amended upto date.

5. That the petitioner was a Director of Upahar Agro Industries Limited till 23.12.2014 when the petitioner submitted his resignation to the Board of Directors of the accused no.1 with immediate effect.

6. That the Board of Directors of the accused no.1held the meeting on 14.01.2015 and adopted a resolution accepting the petitioner's resignation on that day itself with immediate effect which was communicated to the petitioner by a letter dated 14.01.2015 by the Directors of the accused no.1 i.e. the company.

7. The accused no.1 i.e. the company informed the Register of Companies in prescribed form about the resignation of the petitioner from the post of director of the company and the factum of his resignation is also recorded in Form DIR 12 filed by the company with the Register of Companies.

8. The petitioner states that the alleged dishonored cheques were issued by the company on 30.06.2018, 06.07.2018, 14.07.2018 and 28.07.2018 i.e. much after the petitioner had resigned from the post of Director of the company and the acceptance of the petitioner's resignation is duly reflected in the extract of the resolution dated 14.01.2015 and recorded with the Register of Companies about the petitioner's resignation and the petitioner had nothing to do with the affairs of the company with effect from 14.01.2015.

9. Hence, the revision.

10. The following judgment has been relied upon by the petitioner:-

i. Alibaba Nabibasha vs. Small Farmers Agri-Business, AIRONLINE 2020 DEL 1296.

11. The Supreme Court in ***Harshendra Kumar D vs Rebatilata Koley Etc, AIR 2011 SC 1090, decided on 8 February, 2011,*** the Supreme Court held:-

> “***22.*** *Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company. As noticed above, the appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the appellant had resigned from the post of Director of the Company. The acceptance of appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court.”*

12. In the present case:-

(i) The petitioner sent his resignation from directorship to the board of directors on 23.12.2014 (Annexure ‘A’).

(ii) Acceptance of resignation letter is dated 14.01.2015 (Annexure ‘B’).

(iii) Form DIR-12 shows that the resignation u/s 168 has been recorded with the Registrar of companies from 14.01.2015 (Annexure ‘C’).

(iv) At paragraph 4 of the written complaint it appears that all the cheques in the present case are of the year 2018.

13. As such it is clearly on record that the petitioner was not a Director of the company when the cheques were issued and thus not responsible for the same.

14. In ***Dayle De'Souza vs Government of India Through Deputy Chief Labour Commissioner (C) and Anr., in Criminal Appeal No. .... of 2021 (arising out of SLP (Crl.) No. 3913 of 2020), decided on October 29, 2021,*** the Supreme Court held:-

> *"**30.** At the same time, initiation of prosecution has adverse and harsh consequences for the persons named as accused. In **Directorate of Revenue and Another v. Mohammed Nisar Holia, 2008 (2) SCC 370,** this Court explicitly recognises the right to not to be disturbed without sufficient grounds as one of the underlying mandates of Article 21 of the Constitution. Thus, the requirement and need to balance the law enforcement power and protection of citizens from injustice and harassment must be maintained. Earlier in **M/s. Hindustan Steel Ltd. v. State of Orrisa, 1969 (2) SCC 627,** this Court threw light on the aspect of invocation of penalty provisions in a mechanical manner by authorities to observe:-*
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> *"8. Under the Act penalty may be imposed for failure to register as a dealer — Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasicriminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."*
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> *Almost every statute confer operational power to enforce and penalise, which power is to be exercised consistently from case to case, but adapted to facts of an individual case. The passage from **Hindustan Steel Ltd.** (supra) highlights the rule that the discretion that vests with the prosecuting agencies is paired with the duty to be thoughtful in cases of technical, venial breaches and*

genuine and honest belief, and be firmly unforgiving in cases of deceitful and mendacious conduct. Sometimes legal provisions are worded in great detail to give an expansive reach given the variables and complexities involved, and also to avoid omission and check subterfuges. However, legal meaning of the provision is not determined in abstract, but only when applied to the relevant facts of the case. Therefore, it is necessary that the discretion conferred on the authorities is applied fairly and judiciously avoiding specious, unanticipated or unreasonable results. The intent, objective and purpose of the enactment should guide the exercise of discretion, as the presumption is that the makers did not anticipate anomalous or unworkable consequences. The intention should not be to target and penalise an unintentional defaulter who is in essence law-abiding.

31. *There are a number of decisions of this Court in which, with reference to the importance of the summoning order, it has been emphasised that the initiation of prosecution and summoning of an accused to stand trial has serious consequences. They extend from monetary loss to humiliation and disrepute in society, sacrifice of time and effort to prepare defence and anxiety of uncertain times. Criminal law should not be set into motion as a matter of course or without adequate and necessary investigation of facts on mere suspicion, or when the violation of law is doubtful. It is the duty and responsibility of the public officer to proceed responsibly and ascertain the true and correct facts. Execution of law without appropriate acquaintance with legal provisions and comprehensive sense of their application may result in an innocent being prosecuted.*

32. *Equally, it is the court's duty not to issue summons in a mechanical and routine manner. If done so, the entire purpose of laying down a detailed procedure under Chapter XV of the 1973 Code gets frustrated. Under the proviso (a) to Section 200 of the 1973 Code, there may lie an exemption from recording pre-summoning evidence when a private complaint is filed by a public servant in discharge of his official duties; however, it is the duty of the Magistrate to apply his mind to see whether on the basis of the allegations made and the evidence, a prima facie case for taking cognizance and summoning the accused is made out or not. This Court explained the reasoning behind this exemption in* ***National Small Industries Corporation Limited v. State (NCT of Delhi) and Others, (2009) 1 SCC 407:-***

"12. The object of Section 200 of the Code requiring the complainant and the witnesses to be examined, is to find out whether there are sufficient grounds for proceeding against the accused and to prevent issue of process on complaints which are false or vexatious or intended to harass the persons arrayed as accused. (See Nirmaljit

Singh Hoon v. State of W.B.) Where the complainant is a public servant or court, clause (a) of the proviso to Section 200 of the Code raises an implied statutory presumption that the complaint has been made responsibly and bona fide and not falsely or vexatiously. On account of such implied presumption, where the complainant is a public servant, the statute exempts examination of the complainant and the witnesses, before issuing process."

The issue of process resulting in summons is a judicial process that carries with it a sanctity and a promise of legal propriety.

33. *Resultantly, and for the reasons stated above, we would allow the present appeal and quash the summoning order and the proceedings against the present appellant."*

15. It is thus seen that the Magistrate issued summons in the proceedings in this case without any application of mind and the said order is clearly not in accordance with law and thus liable to be quashed.

16. There also being no prima facie case against the petitioner, for the offences alleged, the proceedings in the present case is also liable to be quashed.

17. **CRR 2418 of 2019 is allowed.**

18. The proceedings in case CS/93319 of 2018 under Sections 138 and 141 of the Negotiable Instruments Act, 1881 as amended upto date pending before the learned 19th Metropolitan Magistrate at Calcutta and all orders passed therein including order dated 12.10.2018 and 13.11.2018, **is hereby quashed in respect of the petitioner.**

19. All connected Applications, if any, stands disposed of.

20. Interim order, if any, stands vacated.

21. Copy of this order be sent to the learned Trial Court for necessary compliance.

22. Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)