

22.04.2024

Sl. No.: 19

Court No.30
BM

CRR 2578 of 2019

Sanjay Rao Bhandulkar & Ors.

Vs.

The State of West Bengal & Anr.

Mr. Apalak Basu

Mr. Saroj Tulsian

Ms. Jayanti Paul

... for the petitioners

1. The present revisional application has been preferred praying for quashing of proceeding being case No.CS/17246/2019 under Sections 138/141 of the Negotiable Instrument Act pending before the learned Metropolitan Magistrate, 4th Court, Calcutta including orders dated March 27, 2019 and April 04, 2019 passed in connection with the aforesaid case.
2. Service in the present case could not be effected upon the complainant as the complainant has left the place of residence at the recorded address.
3. In the present case, it appears that the petitioners herein being the **Directors of the Company resigned prior to issuance of the disputed cheque.** The cheque in this case was issued on **18.01.2019.**
4. Documents filed by way of supplementary affidavit shows that all the three petitioners resigned from the Directorship of the company on **08.06.2017.**
5. Documents in support of the said contention is on record.

6. 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.”*

7. In the present case:-

- (i) All the petitioners have resigned from Directorship of the company on 08.06.2017 and the same has been registered with the Registrar of Companies.
- (ii) From the written complaint it appears that the cheque in the present case was issued on 18.01.2019.

8. As such it is clearly on record that the petitioners were not Directors of the company when the cheque was issued and thus not responsible for the same (*Harshendra Kumar D vs Rebatilata Koley Etc, (Supra)*).
9. 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:-*

“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.”

*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.”

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

11. There also being no prima facie case against the petitioners, for the offences alleged, the proceedings in the present case is also liable to be quashed.
12. **CRR 2578 of 2019 is allowed.**
13. The proceeding being case No. CS/17246/2019 under Sections 138/141 of the Negotiable Instrument Act pending before the learned Metropolitan Magistrate, 4th Court, Calcutta including orders dated March 27, 2019 and April 04, 2019 passed in connection with the aforesaid case, **is hereby quashed in respect of the petitioners.**
14. All connected Applications, if any, stands disposed of.
15. Interim order, if any, stands vacated.
16. Copy of this order be sent to the learned Trial Court for necessary compliance.
17. Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)