

12.12.2024

Sl. No.: 24

Court No.30
BM

CRR 4198 of 2023

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IA No.: CRAN 1 of 2024

Anjana Goenka

Vs.

The State of West Bengal & Anr.

Mr. Ananda Gopal Mukherjee

... for the petitioner

- 1.** Affidavit of service filed be kept with the record. In spite of due service there is no appearance on behalf of the opposite party no.2.
- 2.** The present revisional application has been preferred praying for quashing of the criminal proceeding being Complaint case No. CS 92921 of 2016 (Epic Agro Products Pvt. Ltd. vs. Darshak Electric Pvt. Ltd. & Ors.) under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 as amended by Negotiable Instrument (Amendment) Act, 2015 pending before the learned Metropolitan Magistrate, 5th Court, Calcutta in respect of the petitioner.
- 3.** The case of the petitioner is that opposite party no.2 used to sell materials to the petitioner's company.
- 4.** The accused persons issued a cheque bearing No.0016761 dated 10th March, 2016 drawn on Federal Bank Limited, Bhowanipore Branch, Kolkata for a sum of Rs.58,00,000/- to the opposite party no.2 in discharge of their financial liabilities, which was returned unpaid for the reasons "insufficient fund".
- 5.** The opposite party no.2 sent a legal notice on 22nd March, 2016 but unfortunately the same was not replied to.

6. The opposite party no.2 has alleged that the accused persons failed to pay any amount on account of the returned cheque despite demand notices and hence, punishable under Section 138 read with Section 141 of the Negotiable Instrument Act.

7. The petitioner's case is that the petitioner and the accused no.2 Sanjoy Goenka are husband and wife and at present separated.

8. It is the specific case of the petitioner that she had tendered her **resignation** to the Board of Directors of Darshak Electronics Pvt. Ltd. on **17th June, 2015** and the same was accepted by the Board of Directors. Subsequent thereto, the event of resignation of the petitioner was also uploaded in the company's master data and hence the prayer for quashing.

9. Learned Magistrate did not consider the prayer for discharge of the petitioner on the findings as hereunder :-

".....This court is of the view that once the accused has been summoned in summons triable case, the trial is to be brought to its logical conclusion and there is no provision in summons triable offence which permits a dropping of proceedings along the way. To support this view, reliance can be placed on the judgment of Hon'ble Supreme Court passed in the case of Adalat Prasad vs. Ruplal Jindal & Ors. (2004) 7 SCC 338 wherein it was held that "if the Magistrate issues process without any basis, the remedy lies in petition under Section 482 of Cr.P.C, there is no power of the Magistrate to review that order and recall the summons issued to the accused.

In the light of the above made discussion, the petition filed on behalf of accused no. 3 is considered and rejected but without any order as to cost....."

10. From the petition of complaint in CS 92921 of 2016, it appears that the allegation there in is that the accused Company issued cheque No.0016761 dated **10.3.2016** and the proceeding was also initiated under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 in the year 2016.

11. A supplementary affidavit has been used by the petitioner annexing the document (copy of company master data) in support of the contention of the petitioner herein that she was appointed as Director on 16.07.2014 and has ceased to be a Director on and from 17.07.2015. As such the contention of the petitioner that she was not a Director on the date of issuance of the cheque on 10.03.2016 is substantiated by the said document.

12. The said document (copy of company master data) has been filed on affidavit and is a print out from the Website of the Ministry of Corporate Affairs relating to the accused No.1 Company

13. In *Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022*, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be

necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.’

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by

this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in ***State of Haryana and Others v. Bhajan Lal and Others*, 1992 Supp. (1) 335** as under :

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not

be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. The principles culled out by this Court have consistently been followed in the recent

*judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

14. The present case falls under category 1, 3 and 7 of **Para 102 of Bhajan Lal (Supra).**

15. Thus there are no ingredients to even prima facie make out a case against the petitioner in respect of the offences alleged.

16. CRR 4198 of 2023 is allowed.

17. The proceeding being Complaint case No. CS 92921 of 2016 (Epic Agro Products Pvt. Ltd. vs. Darshak Electric Pvt. Ltd. & Ors.) under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 as amended by Negotiable Instrument (Amendment) Act, 2015 pending before the learned Metropolitan Magistrate, 5th Court, Calcutta, **is hereby quashed in respect of the petitioner Anjana Goenka.**

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

19. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)