

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Contempt)
ORIGINAL SIDE

CC-COM/10/2024

M/S. BAKYASHWRI SEA FOOD PVT. LTD. AND ORS.
VS
G. RAJESH AND ORS

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN
AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 2nd May, 2025

Appearance:

Mr. Ajoy Krishna Chatterjee, Sr. Adv.
Mr. Deb Dutta Sen, Sr. Adv.
Ms. Suchismita Ghosh Chatterjee, Adv.
Mr. Sourjya Roy, Adv.
... for the appellant.

Mr. Sourojit Dasgupta, Adv.
Mr. Aniket Chaudhury, Adv.
... for the alleged contemnor.

1. Affidavit-in-reply is filed and is taken on record.
2. Pursuant to the earlier order dated 25th April, 2025 the petitioner has filed an affidavit disclosing the proceeding before the learned 4th Fast Track, Court IV, Metropolitan Magistrate at George Town in connection with STC No. 1159 of 2023, the memorandum of criminal original petition filed in the High Court of Judicature at Madras and the order passed by learned Single Judge of the Madras High Court in connection with the said revisional application.
3. Mr. Ajoy Krishna Chatterjee, learned Senior Counsel appearing on behalf of the petitioner submits that since two different sets of

solicitors are engaged by the petitioner, due to lack of communication, the pendency of the application for criminal revision was mandatorily not disclosed. However, we could not find any satisfactory explanation for not disclosing the application for quashing petition as the petitioner is a company and the person affirming the affidavit ought to have been aware of the statements made in the said petition as he affirmed the petition with full knowledge of the facts stated therein. It appears that by reason of non-disclosure of the said proceedings and the order by which the application for quashing of the criminal complaint was dismissed were not brought to the notice of the coordinate Bench few orders have passed with regard to the contemnor of the complaint case. The coordinate Bench, however, was not unmindful of the power of the Court to restrain a party from proceeding with a criminal complaint has carefully worded its order dated 18th October, 2023 in observing that the Court does not have any power to restrain criminal proceedings and expressing a desire only that the alleged contemnor shall not prosecute the proceedings under Section 138 of the Negotiable Instruments Act, 1882, although not informed that on 19th October, 2023, an application for quashing of the criminal complaint would be filed before the Madras High Court.

4. On 29th January, 2024 when the matter was taken up by the coordinate Bench, the interim order dated 8th January, 2024 was directed to be continued till the disposal of the interlocutory application.

5. On 20th March, 2024 the coordinate Bench observed as follows:-

“We reiterate that all observations made by us therein are to be taken as tentative by the trial judge as well as by the arbitral tribunal. Further, there is no restraint imposed by us on either to proceed with the matter in accordance with law. All assurances recorded in Court shall be honoured by the parties until further order.”

6. The assurance is based on an understanding of the respondent alleged contemnors that they would not proceed with the criminal complaint. Surprisingly, the alleged contemnors have also not brought it to the notice of the coordinate Bench that the quashing application was dismissed on 18th December, 2023 and thereby seems to have accepted that they shall not proceed with the proceedings initiated under Section 138 of the Negotiable Instruments Act, 1882.
7. Although, this assurance appears to hold the ground till date, however, we have to remind ourselves that we are considering the application for contempt for alleged violation of the order dated 18th October, 2023 read with the order dated 20th March, 2024.
8. In view of the fact that the quashing application was dismissed and continuation of the said complaint proceeding before the Metropolitan Magistrate notwithstanding the assurance that the alleged contemnor shall not prosecute the proceedings under Section 138 of the Negotiable Instrument Act has not been stayed it cannot be contended and held that the conduct of the alleged contemnors are

contumacious. They are protected by the order of the Madras High Court as the quashing of the criminal complaint was disallowed.

9. Mr. Chatterjee, learned Senior Counsel has submitted that in the order dated 18th October, 2023 the appellant was allowed to operate its bank accounts without the obligation of maintaining any balance, on the condition that the monthly withdrawal from the accounts from the month of October, 2023 onwards shall not exceed the average monthly withdrawal from the bank accounts over the last twelve months.
10. This order was confirmed at the time of disposal of the appeal.
11. Mr. Chatterjee, learned Senior Counsel submits that the respondents have not furnished any accounts showing compliance of this order.
12. Mr. Chatterjee, learned Senior Counsel submits that the petitioner has apprehension that this order has not been complied with. The petitioner shall be at liberty to take appropriate steps in accordance with law with regard to such apprehension.
13. The contempt application is thus disposed of.
14. However, there shall be no order as to costs.
15. The Rule stands discharged.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)