

(1999) 09 DEL CK 0077

In the Delhi High Court

Case No : Criminal M. (M) No. 2934/98 and Criminal M. No. 5841/98

B.C. Sharma

APPELLANT

Vs

M/s. Ashok Kumar Pradeep Kumar

RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Citation : (1999) 6 AD 196 : (2000) 1 CivCC 123 : (1999) 82 DLT 108 : (1999) 51 DRJ 519 : (1999) 123 PLR 68 : (2000) 1 RCR(Criminal) 309

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Mr. J.K. Dass, for the Appellant; Mr. Manoj Taneja, for the Respondent

Judgement

M.S.A. Siddiqui, J.—By this petition u/s 482 Cr. P.C., the petitioner seeks quashing of the order dated 12.8.1998 passed by the Addl. Sessions Judge, Delhi in CrI. Revision No.131/97 and quashing of the criminal proceedings arising out of the complaint No.19/1/95 pending on the file of the Metropolitan Magistrate, Delhi.

2. The respondent filed a complaint under Sections 138/141 of the Negotiable Instruments Act/420 IPC against the petitioner and others alleging commission of offence under Sections 138/141 of the Negotiable Instruments Act by them. The Metropolitan Magistrate took cognizance upon the complaint and issued processes against the persons arraigned. After entering appearance, the petitioner filed an application for dropping proceedings initiated against him on the ground that on 19.1.1991 he had resigned from the post of Director of the company and had no concern with the company on the date of issue of the cheque in question. By the order dated 28.10.97, the Metropolitan Magistrate dismissed the said application. Aggrieved by the said order, the petitioner preferred a revision before the Additional Sessions Judge, Delhi, which was also rejected vide orders dated 12.8.1998 passed in CrI. Revision No. 131/97. Not satisfied with the dismissal of the revision, the petitioner has come up before this court u/s 482 Cr.P.C.

3. Learned counsel for the respondent has raised a preliminary objection regarding maintainability of the petition filed u/s 482 Cr.P.C. According to the learned counsel, sub-Section (3) of Section 397 Cr.P.C. bars the second revision and this court cannot act as second revisional court under the garb of exercising inherent jurisdiction u/s 482 Cr.P.C. In the case of B.C. Sharma Vs. M/s. Shree Bhagwati Enterprises (Crl. M. (M) No. 2933/98 decided on 27.9.1999), I have already held that where the glaring illegality or injustice stares the court in the face, then the bar created by sub-Section (3) of Section 397 of the Code cannot limit or affect the exercise of the inherent power of the High Court u/s 482.

4. Quashment of the criminal proceedings arising out of the Criminal Complaint No. 19/1/95 is sought on the ground that at the relevant time, the petitioner had no concern with the company as he had already resigned from directorship of the Company on 19.1.91. Reliance is placed on an entry in the Form No. 32 issued by the Registrar of the Companies, which shows that the petitioner has resigned from the said post of the company w.e.f. 19.1.91. As against this, the respondent has placed on record a copy of the form No. 32 issued by the Registrar of the Companies showing that the petitioner remained Director of the said company up to 9.7.97. Both these forms have been issued by the Registrar of the Companies. Thus, the aforesaid inconsistency between the entries has to be resolved at the trial. That being so, the question whether or not the petitioner had resigned from the directorship of the Company on 19.1.91 is a disputed question of fact, which has to be decided at the trial. The said disputed question of fact cannot be decided in the present proceedings u/s 482 Cr.P.C. (Rajathi Vs. C. Ganesan,). Thus, in my opinion, the impugned order does not suffer from any legal infirmity warranting interference of this Court u/s 482 Cr.P.C.

5. In the result, the petition is dismissed.