

(1999) 09 DEL CK 0117

In the Delhi High Court

Case No : Criminal M. (M) No. 2933/98 and Criminal M. No. 5838/98

B.C. Sharma

APPELLANT

Vs

M/s. Shree Bhagwati Enterprises

RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Citation : (1999) 6 AD 521 : (2001) 103 CompCas 26 : (2000) 52 DRJ 46

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.—The respondent filed a complaint against the petitioner and others in the court of the Metropolitan Magistrate Delhi on 29.7.1995 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. Aggrieved thereby the petitioner moved the trial Court 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 offending cheque i.e. on 2.6.95. By the order dated 28.10.97, the Metropolitan Magistrate dismissed the application filed by the petitioner. Aggrieved by the said order, the petitioner moved the Additional Sessions Judge by filing a revision, which was also dismissed vide orders dated 12.8.1998 passed in CrI. Revision No. 137/97. Not satisfied with the dismissal of the revision, the petitioner has come up before this Court u/s 482 Cr. P.C.

2. 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. Reliance is placed on the decisions of the Apex Court in G.M. Hegde Vs. S. Bangarappa (1995) 2 All Cri. L.R. 211 and

Dharampal and others Vs. Smt. Ramshri and others, , Anil Kumar and Others Vs. Moti Ram and Others, . As against the said authorities, learned counsel for the petitioner placed reliance on the decision of the Supreme Court in Jitender Kumar Jain Vs. State of Delhi and Others, , which lays down that although a second revision petition does not lie before the High Court when one is dismissed by the court of sessions, still the proceedings of the court of Session are open to scrutiny by the High Court in exercise of its inherent power u/s 482 Cr.P.C.

3. In Krishnan and another Vs. Krishnaveni and another, , the Apex Court had occasion to consider the question: whether in view of the bar of second revision under sub-Section (3) of Section 397 Cr.P.C., inherent power of the High Court is still available u/s 482 Cr.P.C.? Explaining the scope and power of the High Court u/s 482 Cr.P.C. their Lordships have observed as under:-

"Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused-complainant cannot be allowed to take recourse to the revision to the High Court u/s 397(1) or under inherent powers of the High Court u/s 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power u/s 401 and continuous supervisory jurisdiction u/s 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, Therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified under such circumstances, to exercise the inherent power and in an appropriate case even revisional power u/s 397(1), read with Section 401 of the Code. As stated earlier, it may be exercised sparingly, so as to avoid needless multiplicity of procedure, unnecessary deal in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractice need to be curbed and public justice can be ensured only when trial is conducted expeditiously."

4. On an conspectus and analysis of the aforesaid decisions, it is absolutely clear that the inherent jurisdiction of the High Court u/s 482 Cr. P.C. is to be exercised for either of the purposes specified therein and the remedy there under is not to be resorted to like the remedy of appeal or revision. It is also manifestly clear 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.

5. The only ground taken in the petition for quashing the proceedings is 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 had resigned from directorship of the Company, namely M/s. Pegasus Apparels, Ltd. w.e.f. 19.1.91. As against this, the respondent has placed on record a certified copy of the Form No. 32 issued by the Registrar of the Companies wherein the petitioner has been shown as the Director of the said Company up to 9.7.97. Learned Addl. Sessions Judge has observed that in view of the said entries in the two forms issued by the Registrar of the Companies the contention of the petitioner that at the relevant time he was not the Director of the said company has to be substantiated at the stage of trial.

6. As noticed earlier, the Form No. 32 produced by the petitioner shows that he had resigned from the post of Director on 19.1.1991. On the contrary, Form No. 32 produced by the respondent shows that the petitioner remained Director of the Company till 9.7.1997. Both these forms have been issued by the Registrar of the Companies. Thus, the inconsistency between the entries in the aforesaid forms are apparent on the face of the record and this inconsistency 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. Consequently, the said disputed question of fact cannot be decided in the present proceedings u/s 482 Cr. P.C. Rajathi Vs. C. Ganesan,]. In my opinion, the impugned order does not suffer from any legal infirmity warranting interference of this Court u/s 482 Cr. P.C.

For the reasons discussed above, the petition is dismissed.