

(2015) 03 CHH CK 0013

In the Chhattisgarh High Court

Case No : Criminal Misc. Petition No. 218 of 2014

Chhaya Roy and Others

APPELLANT

Vs

Keshav Das R. Jadwani and Others

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(3), 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2015) 3 CGLJ 21 : (2016) 1 MhLj 19 : (2015) 3 MPHT 14

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Badruddin Khan, for the Appellant; G.D. Vaswani, Advocates for the Respondent

Final Decision : Allowed

Judgement

P. Sam Koshy, J.—The petitioners through the instant writ petition under Section 482 of Cr.P.C. have sought for relief of quashment of the Complaint Case No. 236 of 2011 pending before the Court of JMFC, Raipur to the extent so far as the petitioners are concerned. The brief relevant facts for adjudication of the petition are that respondent No. 1-Keshav Das R. Jadwani filed a complaint case before the JMFC, Raipur stating that he in the capacity of A-4 category Government contractor had received certain contracts from respondent No. 3 firm, i.e., M/s. Dewanshi Construction Partnership Firm relating to construction work and road construction. According to the complainant, respondent No. 3 firm of which respondent No. 2-Subhash Chandra Roy as well as all the present petitioners were active partners had made a part payment of Rs. 4,70,000 by way of a cheque bearing No. 795914 on 8-12-2010 for the said construction work carried by the complainant. According to the complainant/respondent No. 1, the said cheque was put for clearance in his State Bank of India account at Telebandha Branch, Raipur and the said Bank gave an intimation that the payment could not be cleared because of insufficient fund. Thereafter, the complainant served a notice to respondent No. 3 firm and since there was no response or reaction on

the part of respondent No. 3, the complainant had left with no other option but to file a complaint case under Section 138 of the Negotiable Instrument Act before the JMFC, Raipur. The Court below, on due consideration of the statement of the complainant and the contents in the complaint, duly registered the same as Complaint Case No. 236 of 2011 and issued summons to the accused persons in the said complaint case. Further, facts of the case is that the present petitioners who are also the accused persons in the complaint case moved an application under Section 141 of Negotiable Instrument Act on 12-12-2012 seeking for discharging of the criminal proceedings on the ground that they were not directly involved in the issuance of the cheque to respondent No. 1 and that the entire affairs of respondent No. 3 firm was being managed by respondent No. 2.

2. According to the petitioners, the said firm is a partnership firm and the affairs of the firm are managed by respondent No. 2-Subhash Chandra Roy. The said firm had been constituted by a partnership deed dated 1-5-2008 and that all the partners in the said partnership firm had in very categorically terms authorised respondent No. 2 for managing the firm and also had authorised respondent No. 2 to operate bank accounts and the financial related matters on behalf of the firm independently. A Power of Attorney was also executed for this purpose by the petitioners in favour of respondent No. 2-Subhash Chandra Roy appointing him as the attorney holder on behalf of the firm. Copy of the partnership deed and the Power of Attorney executed by the petitioners are Annexures P-1 and P-2 and accordingly, the petitioners had sought for their discharge from the proceedings under Section 138 of Negotiable Instruments Act.

3. The said application under Section 141 of Negotiable Instruments Act was rejected by the JMFC, Raipur on 26-4-2013 (Annexure P-5) against which the petitioners preferred a revision petition before the First Additional Sessions Judge, Raipur, which was registered as Criminal Revision No. 311 of 2013. The said criminal revision was also rejected by the First Additional Sessions Judge vide its order dated 20-11-2013.

4. Both these orders, i.e., order dated 26-4-2013, rejection of the application under Section 141 of N.I. Act and order dated 20-11-2013, rejection of the criminal revision were on the ground that since the complaint case had already got registered and that it is a summons trial proceedings, the contentions put forth by the petitioners being a matter of evidence the Court does not have the power to recall the registration of the complaint case and discharge of the present petitioners. It was also held that whether the petitioners have an active role in the issuance of the cheque or not is a matter of evidence, which cannot be looked into at the preliminary stage by the Court below and accordingly, the applications moved by the petitioners at both the levels were rejected leading to the filing of the present petition under Section 482 of Cr.P.C.

5. The main contention of the Counsel for the petitioners before this Court is that the complaint case ought to have been rejected by the JMFC, Raipur at the

threshold itself for more than one counts; firstly, the complaint does not disclose the role of each of the petitioners in the issuance of the cheque. Secondly, the complainant has not been able to establish before the Trial Court by making specific pleadings in his complaint about the nature of the part played by each of the petitioners while issuing the cheque on behalf the firm. Thirdly, the complainant has also not disclosed anything in his complaint as to what extent each of the petitioners are responsible in the issuance of the cheque in favour of respondent No. 1/complainant.

6. In support of its contention, Counsel for the petitioners relied upon Mrs. Aparna A. Shah Vs. Sheth Developers Pvt. Ltd. and Another, (2013) 5 ABR 119 : (2013) 10 AD 505 : AIR 2013 SC 3210 : (2013) 3 BC 491 : (2014) 118 CLA 366 : (2013) 3 CompLJ 449 : (2013) CriLJ 3743 : (2013) 3 JCC 169 : (2013) 9 JT 258 : (2013) 3 RCR(Civil) 680 : (2013) 3 RCR(Criminal) 686 : (2013) 8 SCALE 140 : (2013) 8 SCC 71 , N.K. Wahi Vs. Shekhar Singh and Others, AIR 2007 SC 1454 : (2007) 2 BC 438 : (2007) 137 CompCas 939 : (2007) 4 SCALE 188 : (2007) 9 SCC 481 : (2007) 4 SCR 883 : (2007) AIRSCW 1880 : (2007) 2 Supreme 811 , National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and Another, (2010) 1 BC 674 : (2010) 2 CompLJ 304 : (2010) CriLJ 1907 : (2010) 2 JT 161 : (2010) 2 SCALE 372 : (2010) 3 SCC 330 : (2010) 98 SCL 407 : (2010) 2 SCR 805 , M/s. Anil Rice Mill and others Vs. State of C.G. and another, (2012) (3) CGLJ 222, 2010 (2) DCR 41 and 2010 (2) DCR 48.

7. Per contra, Counsel for the complainant/respondent No. 1 opposing the revision petition contended that the present petition deserves to be rejected firstly on the ground of maintainability and secondly on the ground of being totally devoid of substance and merit. According to the Counsel for respondent No. 1, the present petition under Section 482, Cr.P.C. is nothing but a second revision petition and that the second revision is not permissible under law and, therefore, the present revision petition under Section 482, Cr.P.C. should be rejected. Counsel for respondent No. 1 submitted that once when the petitioners have already exercised the revisional powers of the Higher Court in challenging the impugned order and the Revisional Court has found that there is no substance in the revision petition and rejected the same, the petitioners by way of invoking the powers of this Court under Section 482 of Cr.P.C. cannot for the second time re-agitate the same issue and a second revision under the provisions of law is not sustainable. Counsel for respondent No. 1 relied upon Jagir Singh Vs. Ranbir Singh and Another, AIR 1979 SC 381 : (1979) CriLJ 318 : (1979) 81 PLR 205 : (1979) 1 SCC 560 : (1979) SCC(Cri) 348 : (1979) 2 SCR 282 , in support of his contention and also relied upon a decision rendered by Punjab and Haryana High Court reported in Jagir Singh Vs. State of Haryana and Others, (1996) CriLJ 2018 Counsel for respondent No. 1 contended that once the revision petition has already been exercised before the Additional Sessions Judge and the impugned order has been upheld, the second revision under Section 482 of Cr.P.C. would not be maintainable. According to the Counsel for respondent No. 1, since the power of the Higher Court by way of a revision has already been

exhausted, the second revision cannot be maintainable and, therefore, the present petition deserves to be rejected.

8. So far as the merits of the case is concerned, Counsel for respondent No. 1 clearly submits that in Para 1 of the complaint lodged by the complainant itself it has been narrated about the role of the petitioners as well as respondent Nos. 2 and 3 whereby the complainant has stated that the petitioners are all equally responsible for the transaction made by the firm and the issuance of the cheque. Therefore, the petitioners cannot be discharged from the criminal prosecution as they are all equally and jointly responsible for the transactions made by the firm wherein a cheque has been issued which stood dishonoured. For these reasons Counsel for respondent No. 1 prayed for rejection of the present petition.

9. Having heard the Counsel for the parties and also on perusal of the record, so far as the first contention of the Counsel for respondent No. 1 in respect of the sustainability of the present revision petition is concerned, this Court is of the view that the powers conferred upon the High Court under Section 482, Cr.P.C. are the inherent powers overriding other powers of the Cr.P.C. including Section 397, Cr.P.C. thereof. It is a settled position of law that unless there is a statutory bar, the High Court under Section 482 of Cr.P.C. can always exercise its inherent powers. In the given facts and circumstances of the case, Section 482 of Cr.P.C. clearly enables the High Court to make such order as may be necessary to prevent an abuse of process of any Court or otherwise to secure the ends of justice. The power under Section 482, Cr.P.C. conferred upon the High Court is an independent power to pass orders *ex debito justitiae* in cases where grave and sustainable injustice has been done or the process of Court being seriously abused. It is not merely a revisional power to be exercised but is also a supervisory power conferred upon the High Court to quash a criminal proceeding or to expunge a uncalled remark passed by the Subordinate Courts. Inherent powers under Section 482, Cr.P.C. can be exercised only when no other remedy is available to the litigant and normally should not be exercised where there is a specific remedy provided under the statute. In a decision rendered by the Supreme Court in the case of *Puran Vs. Rambilas and Another etc. etc.*, AIR 2001 SC 2023 : (2001) CriLJ 2566 : (2001) 2 Crimes 283 : (2001) 2 DMC 1 : (2001) 5 JT 226 : (2001) 3 SCALE 695 : (2001) 6 SCC 338 : (2001) 3 SCR 432 : (2001) 2 UJ 875 : (2001) AIRSCW 1935 : (2001) 3 Supreme 685, it has been held that the power of the High Court under inherent jurisdiction under Section 482, Cr.P.C. is unaffected by provisions of Section 397(3), Cr.P.C.

10. It is further found that the Supreme Court in a series of judgments have also held that in spite of a revision petition under Section 397, Cr.P.C. having been exercised, it does not bar the High Court from exercising its inherent powers. According to the Supreme Court, in the event if a petition under Section 482, Cr.P.C. is entertained, it should not be treated as a Second Revisional Authority but is to be construed as a Court having inherent powers to judge only the fact that if the proceedings before the Court below are permitted to proceed further,

it would amount to abuse to the process of Court and the interest of justice and under these circumstances, the High Court has got all the powers to interfere with such proceedings. For these reasons, this Court is of the opinion that merely because the petitioners have invoked the powers under Section 397, Cr.P.C. before the Sessions Court would not by itself preclude this Court from exercising its inherent powers. Accordingly, this Court is of the opinion that the present petition is, therefore, maintainable and the objection raised by respondent No. 1 being unsustainable stands rejected.

11. So far as the contention whether a case has been made out by the petitioners for this Court to exercise its inherent powers is concerned, we will have to peruse the recent decisions rendered by the Supreme Court in this regard as to under what situation can the petitioners' case be entertained. The Supreme Court in a couple of recent decisions has held that it is only the drawer of the cheque who can be made an accused in the proceedings under Section 138 of the Negotiable Instrument Act. The latest judgment *Mrs. Aparna A. Shah Vs. Sheth Developers Pvt. Ltd. and Another*, (2013) 5 ABR 119 : (2013) 10 AD 505 : AIR 2013 SC 3210 : (2013) 3 BC 491 : (2014) 118 CLA 366 : (2013) 3 CompLJ 449 : (2013) CriLJ 3743 : (2013) 3 JCC 169 : (2013) 9 JT 258 : (2013) 3 RCR(Civil) 680 : (2013) 3 RCR(Criminal) 686 : (2013) 8 SCALE 140 : (2013) 8 SCC 71 in the case of *Aparna (supra)*, which further stands reiterated in *Anil Gupta Vs. Star India Pvt. Ltd.*, (2014) AIRSCW 4210 : (2014) 8 JT 190 : (2014) 3 RCR(Civil) 642 : (2014) 3 RCR(Criminal) 587 : (2014) 8 SCALE 480 and earlier also in *National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and Another*, (2010) 1 BC 674 : (2010) 2 CompLJ 304 : (2010) CriLJ 1907 : (2010) 2 JT 161 : (2010) 2 SCALE 372 : (2010) 3 SCC 330 : (2010) 98 SCL 407 : (2010) 2 SCR 805 , the Supreme Court has very categorically held that it should be specifically spelt out how and in what manner the accused persons were responsible firstly for conducting of the firm's business and secondly in the issuance of the cheque. The provisions of Negotiable Instrument Act being a penal provision it has to be strictly construed. It has been held in all the above referred judgments that the person against whom the proceeding is sought for should be in-charge and responsible for the conduct of the business of the firm at the relevant point of time and also it should be spelt out in the complaint itself as to in what manner the co-accused was conducting the business of the Company except for being a partner of the firm. In the instant case, it is not the case of the complainant that the present petitioners were also the signatories to the cheque and that the complaint is not disclosing the fact as to in what manner the present petitioners were conducting the business of the firm. The complaint is also silent on the role played by, each of the petitioners in the course of issuance of the cheque.

12. Again in the case of *Paresh P. Rajda Vs. State of Maharashtra and Another*, AIR 2008 SC 2357 : (2008) 3 BC 283 : (2008) 144 CompCas 27 : (2008) 4 CompLJ 293 : (2008) CriLJ 3049 : (2008) 7 SCALE 769 : (2008) 7 SCC 442 : (2008) 84 SCL 484 : (2008) 2 UJ 884 : (2008) AIRSCW 3899 : (2008) 4

Supreme 379 , it has been held by the Supreme Court that there must be specific averments against each of the proposed accused persons saying how they were responsible for their day-to-day affairs of the firm and how they were liable for repayment of the amount of dishonoured cheque. The Supreme Court has categorically held that unless there is a clear averment in the complaint or there being evidence with regard to the role played by the directors as to whether they were in-charge for the conduct of the affairs of the Company, it would not be possible to maintain a prosecution against them. Similar view has also been taken in the case of DCM Financial Services Ltd. Vs. J.N. Sareen and Another, AIR 2008 SC 2255 : (2008) 144 CompCas 55 : (2008) 4 CompLJ 265 : (2008) CriLJ 3178 : (2008) 6 JT 609 : (2008) 8 SCALE 54 : (2008) 8 SCC 1 : (2008) AIRSCW 4034 , wherein also the Supreme Court has reiterated the above given position of law.

13. In addition to the above given legal position, relying upon the judgments referred to by the Counsel for the petitioners, i.e., 2010 (2) DCR 41 of the Jharkhand High Court and 2010 (2) DCR 48 of the Bombay High Court and also the judgment of the Madras High Court reported in 2004 (2) BC 73, this Court is of the opinion that the complaint lodged by respondent No. 1 before the Trial Court does not disclose the role played by each of the petitioners and also does not disclose the fact as to how the petitioners were responsible for issuance of the cheque, which has got dishonoured. A perusal of the complaint lodged by respondent No. 1 itself would show that except for a bald statement that the petitioners being active partners in the firm, there is no averment in respect of the role played by the present petitioners in issuance of the cheque or for that matter in conducting the affairs of the business of the firm. Neither does the complaint show any act attributed towards any of the petitioners for the purpose of issuance of the cheque.

14. From all the above given facts and circumstances of the case, what is evident and clear from the pleadings and the documents brought before this Court is that the entire transaction between the parties, i.e., complainant/respondent No. 1 and respondent No. 3 firm was made by respondent No. 2. Further, the partnership deed as well as the Power of Attorney executed (Annexures P-1 and P-2) reflect that it was the respondent No. 2 who was responsible for conducting the affairs of the business of respondent No. 3 firm and as such this Court is of the view that relegating the petitioners to face the prosecution in a proceeding initiated against them under Section 138 of Negotiable Instruments Act would amount to misuse of the process of law. For the foregoing reasons, the instant petition deserves to be and is accordingly allowed. As a consequence, the proceedings under Section 138 of Negotiable Instruments Act against the present petitioners in the Complaint Case No. 236 of 2011 pending before the JMFC, Raipur stands quashed and the present petitioners stand discharged from the proceedings under Section 138 of Negotiable Instruments Act.