

(2016) 11 MP CK 0019
In the Madhya Pradesh High Court
Case No : MCRC No. 10588 of 2016

Jayshree

APPELLANT

Vs

Pradhan Engineering Enterprises Pvt. Ltd.

RESPONDENT

Date of Decision : 07-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2017) 1 MPWN 37

Hon'ble Judges : Alok Verma, J.

Bench : Single Bench

Advocate : Shri A.K. Chitle, learned senior counsel with Shri Jayant Vipat, learned counsel, for the Applicants

Final Decision : Disposed Off

Judgement

Alok Verma, J. - This order shall govern maintainability of this application under Section 482 Cr.P.C.

2. This application under Section 482 Cr.P.C. is directed against the order passed by the learned Chief Judicial Magistrate, Dewas in Criminal Case No.463/2016 dated 22.02.2016 whereby the learned Magistrate took cognizance against the applicants under Section 406 of IPC.

3. The respondent is a private limited company. A criminal complaint was filed before the learned Chief Judicial Magistrate under Sections 406, 420 and 120-B of IPC alleging therein that the complainant/company was manufacturing various parts of mono-block pump and supplied the product to Kirloskar Brothers Ltd. according to their order. One unit of the company was situated at Karad. After withdrawal of order by Kirloskar Brothers, it was decided by the complainant/company that the unit of the company at Karad would be wound up and all the machines, dies, and other equipments would be returned to Dewas Unit of the complainant. The petitioners No.1 to 4 were officers and employees of the company while petitioner No.4 is the company which was running the unit at

Karad.

4. The civil suit was also filed by the respondent praying therein that the petitioners should refund Rs.90,00,000/- price of the machineries, stocks and other material which were not returned by them to the Dewas Unit of the company.

5. The complaint was filed to punish them under the sections as aforesaid.

6. This application is filed without filing any revision before the Sessions Court against the order passed by the Magistrate, and therefore, a question arose on last date whether this application is maintainable without filing a revision before the competent court.

7. The counsel was heard on question of maintainability.

8. The counsel for the State opposes the application on the ground that without filing a revision petition before the competent court, the applicants cannot be approached directly to this Court.

9. Learned counsel for the applicants cites judgment of Hon''ble Apex Court in case of Adalat Prasad v. Rooplal Jindal; (2004) 7 SCC 338. In this case, it was held that the Magistrate has no power to recall its own order, and therefore, any order recalling the process issued against the accused persons in a criminal complaint is bad in law. In that case, on directions issued by the High Court, the Magistrate heard the accused persons and then withdrew its own order directing issuance of process against the accused persons. Learned counsel also places reliance on judgment of Hon''ble Apex Court in case of Subramaniam Sethuraman v. State of Maharashtra and another; (2004) 13 SCC 324. It was held that in order under Section 204 of Cr.P.C. for issuance of process is an interlocutory order and no revision lies against this order. The only remedy is to file an application under Section 482 Cr.P.C. The next case cited by the learned senior counsel is Dhariwal Tobacco Products Limited and Ors. v. State of Maharashtra and Anr.; (2009)2 SCC 370. In this case it was held that the application under Section 482 Cr.P.C. should not be dismissed merely on the ground that no revision was filed by the petitioner when order is revisable. In this case, the Hon''ble Apex Court overruled the principle laid down in case of V.K. Jain v. Pratap v. Padode; (2005) 30 Mah LJ 778 in which it was held that jurisdiction under Section 482 Cr.P.C. has to be exercised sparingly and only in exceptional cases, the jurisdiction under Section 482 Cr.P.C. should not be exercised if recourse can be taken by the applicants to the remedy of filing a revision application under Section 397 Cr.P.C. of the code and finally held that filing of the revision is not a conditioned precedence and court and the High Court have ample power to exercise jurisdiction under Section 482 Cr.P.C. r/w section 483 Cr.P.C. a similar principle was laid down in case of Prabhu Chawla v. State of Rajasthan; (2016) 0 SCC 686, it was held that not filing a revision before the Court is no bar where there is apparent abuse of process of court, the application under Section 482 Cr.P.C. should be entertained.

10. The Hon''ble Apex Court in case of Dhariwal Tobacco (supra) in para 6 held that the order issuing summons is not an interlocutory order within the meaning of Section 397 Cr.P.C. and this order is revisable as held in various cases from R.P. Kapoor v. State of Punjab; AIR 1960 SC 866 to Som Mittal v. Govt. of Karnataka; (2008) 2 SCC (Cri.) 1.

11. After going through the case law cites by the learned counsel for the applicant, it is apparent that the order issuing the summons under Section 204 Cr.P.C. is a revisable order, a revision lies before the Sessions Court and this is also apparent that no such revision is filed in the present case. Now it is to be seen whether without filing a revision, this application is maintainable or not.

12. Going through all the case law cited by the learned senior counsel, it is clear that an application under Section 482 Cr.P.C. is maintainable without availing remedy of revision whether the order impugned is a revisable order. However, for directly approaching this Court, some exceptional grounds should be shown to the Court for not approaching the revisional court and approached this Court directly.

13. In this case, the main ground taken by the applicant is that the relief sought by the complainant in civil suit is similar to the relief sought by him in a criminal case. According to him, it was a civil dispute, therefore, no case is made out under the criminal law. However, going through the application as a whole, I find no exceptional ground exists for approaching this Court directly. The revisional court can also see that while the civil dispute is pending between the parties whether on the same set of facts an offence under Section 406 IPC is made out. There are no exceptional ground exists in the present case for approaching this Court directly.

14. Accordingly, this application is disposed of without considering the merit of the case with a liberty to the applicants to approach the revisional court first and then if need arise, he may approach this Court under Section 482 Cr.P.C.