

(2016) 09 CAL CK 0015
In the Calcutta High Court
Case No : CRR No. 3793 of 2014.

M.K. Products - Petitioner @HASH M/s. Blue Ocean Exports (P) Ltd. and Others

Date of Decision : 01-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, Section 141

Citation : (2016) ACD 976 : (2016) 168 AIC 602 : (2016) 4 AICLR 626 : (2017) 2 CalCriLR 202 : (2017) 1 DCR 43 : (2017) 1 ECRC 590 : (2016) 3 MadWNCri 155

Hon'ble Judges : Sankar Acharyya, J.

Bench : Single Bench

Advocate : Mr. Soubhik Mitter, Mr. Siddhartha Sharma, Ms. Urmila Chakraborty, Advocates, for the Petitioner; Mr. Sumit Kr. Roy, Md. Shamsheer Ahmed, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Sankar Acharyya, J. - This revisional application has been filed by petitioner/complainant against three opposite parties/accused and the opposite party no. 4 State of West Bengal under Sections 401/482 of the Code of Criminal Procedure, 1973 challenging legality, propriety and correctness of the order no. 2 dated 22.09.2014 passed by learned Chief Judge, City Sessions Court, Calcutta in Criminal Appeal No. 90 of 2014.

2. The petitioner as complainant filed complaint under Sections 138/141 of the Negotiable Instruments Act against the opposite party no. 1 to 3 as accused. That case being No. C 22367 of 2011 was tried by learned Metropolitan Magistrate, 13th Court, Calcutta and after trial the accused/opposite parties no. 1 to 3 were acquitted. Complainant/petitioner filed Criminal Appeal No. 90 of 2014 in the Court of learned Chief Judge, City Sessions Court, Calcutta. Passing the impugned order learned Chief Judge, City Sessions Court did not admit the appeal with finding that the appeal is not maintainable.

3. In this revisional application the petitioner succinctly has contended that the

impugned order is bad in law and his statutory right of appeal has been denied resulting miscarriage of justice.

4. The only question involved in this case is whether against judgment of acquittal in a criminal case instituted on complaint the victim can prefer appeal without leave of the High Court under the Code of Criminal Procedure.

5. The petitioner lodged the complaint in C 22367 of 2011 claiming himself as victim of the alleged caused of action. In the impugned order learned Judge held, "Sub Section (4) of Section 378 Cr.P.C provides for appeal against an order of acquittal passed in a case instituted upon the complainant. In my view insertion of proviso to Section 372 Cr.P.C by way of amendment has given right to appeal to those ?victim? who has got no opportunity to participate in the trial or the proceedings and ventilate his/her grievance in that proceedings and not to the ? victim? and/or complainant who fully participated in the proceedings and exhausted his/her all resources to establish the guilt of the accused".

6. Pointing out the said observation, made in the impugned order, Mr. Mitter, learned counsel for the petitioner advanced his arguments that the said finding of the learned Judge is not the correct proposition of law and liable to be set aside.

7. On the other hand, Mr. Ray, learned counsel for the contesting opposite parties no. 1 to 3 relied on the decision of the Division Bench of Kerala High Court in the case of Omana Jose v. State of Kerala and Others reported in 2014 (3) AICLR 687. He argued that the impugned order was very rightly passed by learned Chief Judge, City Sessions Court, Calcutta relying upon the above mentioned decision of the Hon?ble Apex Court and there is no scope to interfere with impugned order. He also relied upon the principles discussed in Satya Pal Singh v. State of M.P. and Others reported in 2016 (1) AICLR 7 (S.C.) and in Subhash Chand v. State (Delhi Administration) reported in 2013 (1) Crimes 135 (SC).

8. Mr. Mitter, advocate for the petitioner cited two decisions of this High Court in the cases National Plywood Industries and Others v. State of West Bengal and Another reported in (2013) 1 C Cr LR (Cal) 871 and Nirmal Kumar Batabyal v. The State of West Bengal and Others available in Mr. Mitter submitted that in the case of Nirmal Kumar Batabyal (supra) the case of Satya Pal Singh (Supra) was discussed and distinguished with observation that "The Apex Court, however in the aforesaid case did not have the occasion of dealing with an order of acquittal passed by a Magistrate where the appeal against such order at the behest of the victim would lie before the Court of Sessions in terms of the proviso to Section 372 of the Code of Criminal Procedure and may not require a leave in terms of Section 378 (3) Cr.P.C."

9. Mr. Roy has submitted that in the case of Omana Jose (Supra) Hon?ble Kerala High Court dealt with case instituted on complaint under Section 138 of the Negotiable Instruments Act by victim complainant and held that the complainant in a case under Section 138 of the Negotiable Instruments Act cannot challenge the order of acquittal before the Sessions Court under the proviso to Section 372

of the Code of Criminal Procedure and his remedy is only to file an appeal to the High Court with special leave under Section 378 (4) of the Code of Criminal Procedure.

10. Moot question for determination in this case is whether the petitioner being victim complainant was entitled to prefer the appeal against judgment and order of acquittal in the Court of the learned Chief Judge, City Sessions Court, Calcutta where his appeal was not admitted passing the impugned order.

11. I have gone through the relevant provisions under Sections 2 (wa), 372 and 378 of the Code of Criminal Procedure and the judgments cited on behalf of the parties in contest.

12. In the case of National Plywood Industries and Others (Supra) the definition and interpretation of the word 'victim' was discussed.

13. In that case it was held that holder of the cheque is to be determined both complainant and victim. In the revisional application under my consideration, however, no controversy has been raised against petitioner's claiming himself as complainant as well as victim under Section 2 (wa) of the Code of Criminal Procedure. Said cited judgment does not appear to me as helpful to arrive at correct decision on the question of legality of the impugned order. In the case of Nirmal Kumar Batabyal (supra) Hon'ble Judge of this Court observed, ".....as the clear and unequivocal words of the proviso to Section 372 Cr.P.C. alone create a right as well as a forum for appeal for the victim (other than a complainant) against orders of acquittal, it would be impermissible by any known, mode of construction to whittle down such clear words of the proviso and render them otiose by reference to other provisions of the Code including Section 378 Cr.P.C. This issue never fell for decision in Satya Pal (supra) and the said report cannot be considered an authority on such proposition". In that judgment it was held, "In the event, the victim prefers an appeal to the Court of Sessions in terms of the proviso to Section 372 of the Code of Criminal Procedure, no leave is required to be granted by the High Court in terms of sub-section (3) of section 378 Cr.P.C. as amended by Act 25 of 2005 which restricts such leave only to appeals preferred before the High Court and not before any other forum". In the said decision the cases of Omana Jose v. State of Kerala and Others (Supra) and Subhash Chand v. State (Delhi Administration) (supra) were not discussed. Said case of Nirmal Kumar Batabyal (supra) was a case instituted on police report and not on complaint and the victim was not the complainant as the petitioner was in the case on hand. As such ratio of that judgment is not applicable here.

14. In Omana Jose v. State of Kerala and Others (Supra) the case of Subhash Chand v. State (Delhi Administration) (supra) was referred to. Referring to a series of judgments of the Hon'ble Supreme Court the principles of interpretation of statutes have been discussed in that judgment for interpreting the provisions under Sections 2 (wa), 372 and 378 of the Code and a vivid discussion on object

and reasons of amendment in the Code of Criminal Procedure by Act 25 of 2005 and Amendment Act 5 of 2009 in the related matters has been made with reference to 154th report of Law Commission and 221st report of the Law Commission. In that judgment Hon^{ble} Kerala High Court observed,-

"33. Before the amendment of the Code of Criminal Procedure, the remedy of the complainant in a case instituted on complaint against the order of acquittal of the accused was to file an appeal before the High Court under Section 378(4) provided special leave to appeal was granted by the High Court. Section 378(4) continues in the Code even after the amendments brought out by Act 5 of 2009, by which the definition of 'victim' and a proviso to Section 372 of the Code were inserted. Drastic changes were made in Section 378 by Act 25 of 2005 and even at that time, Section 378(4) was not amended. It cannot be assumed that the Parliament was not aware of the remedy to file an appeal only to the High Court provided under Section 378(4) to challenge an order of acquittal passed in a case instituted upon complaint. Before the amendment, in a case instituted on police report, the victim could challenge the order of acquittal only by filing a revision under Section 397 of the Code of Criminal Procedure. After the introduction of the definition of 'victim' in Section 2 (wa) the victim in a case instituted on police report can prefer an appeal to the Sessions Court against any order passed by the Court acquitting the accused or convicting the accused for a lesser offence or imposing inadequate compensation. No special leave to appeal is required in the case of an appeal filed under the proviso to Section 372. If it is to be construed that a complainant in a complaint case can file an appeal to the Sessions Court under the proviso to Section 372 or to the High Court under Section 378(4) of the Code of Criminal Procedure, that would mean that a complainant in a complaint case, who is the victim in the case, would have two remedies. If he chooses the remedy under the proviso to Section 372, he can file an appeal, as of right, to the Sessions Court and no special leave to appeal is required. If the aforesaid interpretation is accepted and if the complainant files appeal against acquittal before the High Court under Section 378(4), special leave to appeal is required. It cannot be said that the law makers provided two remedies to the complainant in a complaint case (who is also a victim) to file an appeal before the Sessions Court or before the High Court. There is no provision either in Section 372 or in Section 378 that when an appeal against an order of acquittal is filed by the complainant before the Sessions Court, he is precluded from filing an appeal before the High Court under Section 378(4) of the Code of Criminal Procedure. Section 378(4) does not say that an appeal lies to the High Court only against an original order of acquittal passed by the trial court. If it is to be interpreted that the proviso to Section 372 covers also an appeal against acquittal in a complaint case, what prevents the complainant from filing a further appeal to the High Court under Section 378(4) if the Sessions Court also acquits the accused confirming the order of acquittal passed by the trial court? By the Amendment Act 5 of 2009, we are sure that the law makers did not provide such a remedy to the complainant in a complaint case, who is also a victim. It is not a

case where the law makers provided concurrent remedies to the complainant in a complaint case to file appeal either before the Sessions Court or before the High Court. If that is so, a provision similar to sub-section (3) of Section 397 of the Code of Criminal Procedure would have been found a place either in Section 372 or in Section 378. Sub-section (3) of Section 397 bars further revision by the same person who has already filed a revision either before the High Court or before the Sessions Court. Absence of such a provision like Section 397(3) either in Section 372 or in Section 378 would also give an indication that the law makers did not provide concurrent jurisdiction on the Sessions Court and the High Court to entertain an appeal against acquittal, by the victim in a complaint case.

34. The expression "unless the context otherwise requires" occurring in Section 2 would be a helpful tool for the interpretation of the proviso to Section 372 to resolve the question whether the context requires an interpretation to the term ? victim? taking out of its purview, a complainant in a complaint case. On a consideration of the aforesaid provisions of law, we are of the view that the expression ?victim? requires an interpretation in the context of the provisions in Sections 372 and 378 to exclude the complainant in a complaint case, who is also the victim, from the purview of the definition of victim under Section 2 (wa). The principles of harmonious construction and the principle that one section in a statute cannot be used to defeat the provision in another section would enable the Court to come to such a conclusion alone. Such an interpretation would make the textual interpretation to match with the contextual. Comprehending the various principles referred to above in their context and without construing a particular word in isolation and taking the statute as a whole, we differ from the view taken in *Shibu Joseph and others v. Tomy K.J. and others* : 2013 (4) KHC 629 and accept the view taken in *Sree Gokulam Chit and Finance Co. (P) Ltd., Kasaragod v. Damodaran N. And another* : 2013 94) KHC 395".

15. In paragraph- 35 of the judgment it was held that the complainant in a case under Section 138 of the Negotiable Instruments Act cannot challenge the order of acquittal before the Sessions Court under the proviso to Section 372 of the Code of Criminal Procedure and his remedy is only to file an appeal to the High Court with special leave under Section 378 (4) of the Code of Criminal Procedure.

16. The ratio of the said judgment in *Omana Jose's* case is applicable here and is followed by this Court in view of the facts and circumstances of this case under consideration.

17. Learned Sessions Judge has fortified the impugned order relying upon the judgment reported in (2013) 1 Crimes (SC) 135 which is the case of *Subhash Chand v. State (Delhi Administration)* (supra). In that case of *Subhash Chand* the Hon?ble Supreme Court was pleased to hold, "In view of the above, we conclude that a complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court. He cannot file such appeal in the Sessions Court.....".

18. Having considered the facts, circumstances and legal aspects I find and hold that learned Chief Judge, City Sessions Court, Calcutta has rightly refused to admit the appeal against the judgment and order of acquittal.

19. As a result, this revisional application fails and dismissed. The impugned order is left without interference.

20. Urgent Photostat certified copy of this judgment, if applied for, be made available to the parties or their advocates on record expeditiously in compliance of usual legal formalities.