

(2019) 11 DEL CK 0023

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 4320, 4326 Of 2019

Nitin Gupta

APPELLANT

Vs

M/S Aakash Metal Industrial

RESPONDENT

Date of Decision : 04-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 251, 313, 464, 482
Negotiable Instrument Act, 1881 — Section 138, 143, 145(2)

Citation : (2019) 264 DLT 493 : (2020) 1 AD(Delhi) 353 : (2019) 4 JCC 3959

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Lokesh Patodia, Anuj Jain, Vinod Pal, I.V. Raghav

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. The present petitions have been filed under Section 482 CrPC seeking quashing of the order dated 06.05.2019 passed by the Addl. Sessions Judge, Shahdara District, Karkardooma Courts, Delhi arising out of CC No.12358 of 2016 and CC No. 12360 of 2016 between the same parties.
2. As the parties in the above cases are common and both the petitions raise identical questions, they are taken up together for disposal.
3. The short question raised in the present petition is whether non-framing of formal notice under Section 251 Cr.P.C. would vitiate entire proceedings requiring a fresh trial?
4. Learned counsel for the petitioner/accused contended that the respondent/complainant filed the aforementioned complaint case against the petitioner under Section 138 of the Negotiable Instrument Act.
5. For the sake of felicity, the chronological list of events as noted by the revisional court in the impugned order, are reproduced below:-

"2. The relevant facts for the disposal of the present revision petition are that a complaint u/s 138 of Negotiable Instrument Act, 1881 (N.I. Act) was filed against the revisionist on 30.06.2016 for dishonour of the cheque and vide order dated

14.07.2016 the accused was summoned for the offence u/s 138 N.I. Act. On 03.11.2016, the counsel for accused filed the Memorandum of appearance of the accused. On 10.11.2016 the accused was exempted and complete set of documents were given and the matter was posted for appearance and notice of the accused. On 18.11.2016 the counsel for both parties were present and they sought for referring for the Mediation Centre. On 20.12.2016 it was recorded that the mediation failed and counsel for accused sought time for filing application u/s 145(2) N.I. Act. On 20.01.2017 no application u/s 145 (2) N.I. Act filed and therefore opportunity to cross examine the complainant witnesses was closed.

3. It is also worthwhile to mention that subsequently the similar application u/s 145(2) N.I. Act was moved which was dismissed vide order dated 25.03.2017 and the matter was posted for S.A./DE. The revisionist had preferred the revision petition u/s 482 Cr.P.C against the order of Ld. ACMM whereby his right to cross-examination was closed. The same was dismissed by Hon'ble High Court of Delhi on 04.01.2018. Thereafter, the matter was listed for DE and on 05.12.2018 right to accused to lead DE was closed and matter was posted for final arguments, thereafter, the present revision petition was moved."

6. It is the case of the petitioner that the trial court did not frame any formal notice either on 20.12.2016 or 20.01.2017 when the petitioner appeared and this has vitiated the entire trial proceedings. It has been pleaded that the above fact came to knowledge of the present counsel who was recently engaged when the case was listed for final arguments.

7. I have heard learned counsels for the parties and have also gone through the case records.

8. It is relevant to note that the present case was fixed for final arguments before the trial court on 04.02.2019, when the petitioner filed a revision petition before the Sessions court impugning the order dated 20.12.2016 and 30.01.2017, seeking the following prayers:-

"a. Call for the record of complaint case pending in the court of Sh. Vijay Kumar Jha, KKD courts, Delhi titled as "M/s Aakash Metal Industries Vs. Nitin Gupta" vide CC no.12360/16 and stay the proceedings in the said case till the disposal of the present petition.

b. Examine the legality and correctness of order dated 20.12.2016 and 20.01.2017 passed by the Ld. Trial Court in case titled as "M/s Aakash Metal Industries Vs. Nitin Gupta" vide CC no.12360/16.

c. Set aside the order dated 20.12.2016 and 20.01.2017 passed by the Ld. Trial Court in case titled as "M/s Aakash Metal Industries Vs. Nitin Gupta" vide CC no.12360/16 and trial court may kindly be directed to proceed with the trial

afresh after framing of notice U/s 251 CrPC, in the interest of Justice."

9. A similar revision petition was filed in the second complaint case as well.

10. By the impugned order, the Addl. Sessions Judge dismissed both the revision petitions by holding that it was not necessary to frame a formal notice under Section 251 Cr.P.C..

11. Section 251 CrPC reads as follows:-

"251. Substance of accusation to be stated.-When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."

12. In terms of Section 143 NI Act, subject to the proviso, as per normal rule, the proceedings under Section 138 of Negotiable Instrument Act are summary in nature. On appearance of the accused, the Magistrate is required to explain the substance of accusation to the accused and ask him whether he would plead guilty or has any defence to make, however in terms of the mandate of the Section, it would not be necessary to frame a formal notice.

13. It has neither been pleaded nor argued before this Court that when the petitioner appeared, the Magistrate did not state the substance of the accusation to him or did not ask whether he pleaded guilty or wished to lead any defence evidence. The only argument raised now is that on that date, no formal notice under Section 251 CrPC was framed by the Magistrate.

14. Looking at the issue from another angle as to whether any failure of justice has occurred on account of non framing of formal Notice under Section 251 CrPC by the trial court on 20.12.2016. In this regard, it is profitable to refer to Section 464 CrPC which provides that "no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has been occasioned thereby".

15. In Sanichar Sahni Vs. State of Bihar reported as (2009) 7 SCC 198, it was held as under:-

"25. A Constitution Bench of this Court in Willie (William) Slaney v. State of M.P. considered the issue of non-framing of charges properly and conviction of an accused for the offences for which he has not been charged and reached the conclusion as under:-

"86. ... In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out.

87. If it is so grave that prejudice will necessarily be implied or imported, it may be described as an illegality. If the seriousness of the omission is of a lesser degree, it will be an irregularity and prejudice by way of failure of justice will have to be established".

26. This Court in Gurpreet Singh v. State of Punjab referred to and relied upon its earlier judgments in Willie (William) Slaney and State of A.P. v. Thakkidiram Reddy and held that unless there is failure of justice and thereby the cause of the accused has been prejudiced, no interference is required if the conviction can be upheld on the evidence led against the accused. The Court should not interfere unless it is established that the accused persons were in any way prejudiced due to the errors and omissions in framing the charges against him. A similar view has been reiterated by this Court in Ramji Singh v. State of Bihar.

27. Therefore, the law on the issue can be summarized to the effect that unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory."

16. On 10.11.2016, the trial court passed the following order:-

"the complainant to supply the complete set of documents with acknowledgment to the accused and one additional set be filed on court record. If the copies of documents are not supplied, accused can take same from court record."

17. The above would indicate that on 10.11.2016, the trial court directed that the petitioner would be supplied with the entire set of documents. On a request made, the trial court referred the case for mediation, which ultimately failed. As such on 20.12.2016, when the case was taken up by the trial court, the petitioner was fully aware of the case against him as it has not been argued that on that date, the trial did not state the substance of accusation to the accused. Rather, at request of the counsel for the accused, time was granted to file an application under section 145(2) N.I. Act.

18. In my opinion, as per mandate of the section 251 CrPC, no formal notice is required to be framed so long as the substance of the accusation is stated and the accused is asked whether he pleads guilty or intent to lead any defence evidence. During the course of arguments, learned counsel for the petitioner has failed to point out as to what prejudice has been suffered on account of non framing of a formal notice.

19. It is relevant to note that the petitioner had approached this court on an earlier occasion as well vide CRL.M.C. 4463/2017 where he challenged the order dated 20.12.2016, i.e., the same order which is again impugned herein, on the ground that his right to cross-examine the complainant was closed. The aforesaid petition came to be dismissed on 04.01.2018. While noting the conduct of the

petitioner, it was held as under:-

"8. Keeping in mind the above provisions as well as the parameters of this court under Section 482 Cr.P.C., it is found as per the facts and circumstances of the present case, the petitioner was granted several opportunities to file an application under Section 145(2) of NI Act. The first opportunity to file an application under Section 145(2) of NI Act was granted to the counsel for the petitioner on 03.11.2016 and thereafter, on 10.11.2016, 18.11.2016, 20.12.2016 and 21.01.2017. After being provided three opportunities to the petitioner to file an application under Section 145(2) of NI Act by the court, on 20.12.2016 when the petitioner further failed to file the same, he was granted one last opportunity subject to the cost of Rs. 10,000/- and matter was further list up for 20.01.2017. However, on 20.01.2017, the petitioner's failure to file the same, led to closure of his right to cross-examine the respondent/complainant. On 20.01.2017, the petitioner appeared in the concerned court and his appearance is shown in the order dated 20.01.2017, when the petitioner's right to cross-examination was closed by the Trial Court.

9. On perusal of the entire facts and circumstances of the case as well as the record, this court is of the view that the petitioner was provided with ample opportunities by the Trial court to file the said application under Section 145(2) of NI Act before the concerned court, and only after reasonable opportunities were given, the right of the petitioner was closed.

10. Hence, keeping in view the above, no interference by this court in impugned order dated 20.01.2017 and 25.03.2017 passed by the Trial court is called for."

20. From above, it is apparent that the petitioner has been found guilty of causing delay in the trial for one reason or the other. The present case pertains to a complaint of the year 2016. It appears that earlier, the petitioner had deliberately raised a piecemeal challenge to the order dated 20.12.2016 with respect to closure of petitioner's right to cross-examine the complainant and now, the very same order is challenged for non framing of a formal notice under Section 251 CrPC by the trial court.

21. It is relevant to note that the petitioner's statement under Section 313 CrPC was recorded on 06.09.2017 and thereafter, the matter was posted for 16.10.2017 for the purpose of recording defence evidence. Thereafter, on multiple occasions, the petitioner was granted time to lead defence evidence. However, no defence evidence was led and eventually on 05.12.2018, the petitioner's right to lead defence evidence was closed.

22. By way of present case, the petitioner has sought to challenge the impugned order after about 2 & ½ years and that too when the trial is at the fag end and the case is listed for the final arguments.

23. The present petition is rather yet another attempt by the petitioner to delay the trial. Looking at the overall conduct of the petitioner in delaying the

proceedings for one reason or the other, the present petitions are dismissed with costs of Rs.10,000/- to be paid to the complainant.

24. The trial court is directed to expedite and conclude the hearing at earliest.

25. A copy of this order be sent to the concerned trial court.