
(2016) 11 DEL CK 0008

In the Delhi High Court

Case No : Crl.Rev.P. No. 842 of 2015 and Crl.M.A. Nos. 18845-18846 of 2015

Pawan Kumar Aggarwal

APPELLANT

Vs

Smt. Usha Rani

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340, Section 397, Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2016) 3 DCR 444 : (2016) 4 JCC 241 : (2017) 1 NIJ 612

Hon'ble Judges : Mr. P.S. Teji, J.

Bench : Single Bench

Advocate : Mr. N.K. Aggarwal, Advocate, for the Petitioner; Nemo, for the Respondents

Final Decision : Dismissed

Judgement

Mr. P.S. Teji, J. - By this revision petition filed under Section 397 read with Section 482 of Cr. P.C., the petitioner seeks an order thereby quashing/setting aside the order dated 13.11.2014 passed by the learned Additional Sessions Judge, Dwarka, Delhi, thereby dismissing the appeal against the order dated 09.07.2014 passed by the learned Metropolitan Magistrate Dwarka in his application under Section 340 Cr.P.C. moved in complaint case filed by respondent No.1 under Section 138 of Negotiable Instruments Act, 1881.

2. In nutshell, the admitted facts of the case are that the petitioner needed to show some amount in his bank so as to obtain the loan to carry out the business of stone crusher in Rajasthan and the respondent No. 2 had issued two cheques from the account of respondent No. 1 of Rs.5 lacs each. The petitioner had issued a post dated cheque No.979178 dated 31.03.2010, on the basis of dishonor of the same, the complaint under Section 138 of Negotiable Instruments Act, 1881 was filed by Usha Rani, wife of respondent No. 2 herein. Ultimately, respondent No. 1 did not prove her case and the petitioner was acquitted by giving benefit of doubt.

3. The petitioner filed an application under Section 340 Cr.P.C. against the respondents/complainant urging that respondents have committed the offence of perjury by filing a false complaint along with false affidavit. The learned Metropolitan Magistrate vide order dated 09.07.2014 dismissed the said application by holding that no prima facie case in terms of provisions of Section 340 Cr.P.C. against Usha Rani and Sushil Arora are found to be made out.

4. Against the aforesaid order of learned Metropolitan Magistrate, the petitioner had preferred an appeal being C.A. No.38/14 before the learned Additional Sessions Judge, Dwarka. Vide order dated 13.11.2014, the learned Additional Sessions Judge has dismissed the appeal. That's why the petitioner is before this court by way of the present revision petition.

5. Learned counsel for the petitioner contended that the respondent No. 1 had admitted her guilt qua filing of false complaint case and out rightly, admitted that her husband is the person, who has acted in fabrication of document filed in the complaint case against the petitioner. It is further submitted that respondent No. has admitted the aforesaid facts in her affidavit Ex. CW-1/1 before court. Therefore, this act of perjury is self sufficient to hold the respondents liable to be punished under Section 340 Cr.P.C. However, the learned Appellate court has reached to the wrong conclusion that "no offence of perjury has been committed by the respondents". While urging the legal principles regarding placing wrong facts and filing a false affidavit before the court, the petitioner has placed reliance on various decisions such as; Chandra Shahi v. Anil Kumar Verma, 1995 SCC (1) 421; Muthu Kuruppan v. Parithi Ilamvazhuthi & Anr. (Crl. Appeal No.1376 of 2004); Dhaanjay Sharma v. State of Haryana, (1995) 3 SCC 757; and Sanjeev Kumar Mittal v. The State, 2010 (174) DLT 214.

6. Learned Additional Public Prosecutor appears on behalf of the State and submits that there is no illegality or infirmity in the order passed by learned Metropolitan Magistrate as well as learned Additional Sessions Judge and the order/judgment passed by learned Additional Sessions Judge does not call for any interference from this Court.

7. I have heard learned counsel for the parties and have also gone through the impugned judgments and orders passed by learned Metropolitan Magistrate as well as learned Additional Sessions Judge.

8. It is an undisputed fact that there was a money transaction between the petitioner as well as respondents. The transactions were through cheques. Cheque was issued by respondents in favour of the petitioner. Petitioner has also issued post dated cheque. Though, respondent No. 1 had filed a complaint under Section 138 of Negotiable Instruments Act, 1881 against the petitioner, but the same was dismissed and the benefit of doubt was given to the petitioner.

9. This court notes that despite there being money transactions between the parties and the petitioner had also admitted its liability by issuing post dated cheque and the fact that the complaint under Section 138 of Negotiable

Instruments Act, 1881 has been dismissed by the learned Metropolitan Magistrate, the petitioner preferred an application under Section 340 of Cr.P.C. and raised certain legal issues.

10. This court has also gone through the impugned orders passed by learned Metropolitan Magistrate as well as learned Additional Sessions Judge on the issue of taking cognizance under Section 340 Cr.P.C. against the respondents. Both the aforesaid courts have dismissed the contentions raised by the petitioner and now the petitioner is before this court for invoking the powers under Section 482 of Cr.P.C.

11. The parameters for exercising the power under Section 482 of Cr.P.C. have been laid down in *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.*, 1992 SCC Supl. (1) 335, which have been reiterated in a recent judgment of the Supreme Court in Criminal Appeal No. 773 of 2003, titled as *Sundar Babu & Ors. v. State of Tamil Nadu* decided on 19.02.2009, the extracts of which are reproduced hereunder:

"The parameters for exercise of power under Section 482 have been laid down by this Court in several cases. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances, under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

?? All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action, which would result in injustice and prevent promotion of justice."

12. Adverting back to the facts of the present case, this court finds that the learned Additional Sessions Judge by taking note of the fact that in the criminal complaint in which the application under Section 340 Cr.P.C. was filed by the petitioner herein, respondent No. 1 had submitted that loan was taken by the petitioner for commencing his business from her husband and she has given a

cheque only. The admission of respondent No. 1 in her pleadings including the affidavits regarding the date, time and execution of all the affidavits and contents thereof cannot tantamount to commission of offence of perjury. Finding the contents of the complaint filed by the complainant/respondent No. 1 being neither false nor contradictory to the story of advancing loan to the petitioner through her husband/respondent No. 2, the learned Additional Sessions Judge agreed with the reasoning of the learned Metropolitan Magistrate taking a view that no offence of perjury has been committed by the respondents.

13. Regarding conducting of a preliminary inquiry by the court under Section 340 Cr.P.C., it is held that it is only the formation of an opinion by the court before which proceedings were to be held, that:-

"it is expedient in the interest of justice that an inquiry should be made into offence which appears to have been committed. Therefore, in order to form such an opinion the court is empowered to hold a preliminary inquiry but even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to proceedings in that court. Therefore, absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. The purpose of inquiry is not to find whether any particular person is guilty or not. Otherwise, its purpose is to, even if court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offences which appears to have been committed. The preliminary inquiry is not mandatory. It may be because situation can be such where there is strong suspicion, but there is not sufficient evidence to return a finding that it appears to have been committed. There can be a case where there is sufficient material to return such a finding. In a former case, preliminary inquiry is necessary in the later case, it is not. As such there is no mandatory requirement to conduct a preliminary inquiry. In this regard reliance is placed upon *Dalip Singh v. State*, 2013 Cri.LJ 2481."

14. Upon careful scrutiny of the facts and circumstances of the case, this court finds no illegality or infirmity in the findings returned by learned Metropolitan Magistrate as well as learned Additional Sessions Judge.

15. In the light of the facts of the present case, this court does not find any irregularity or infirmity in the impugned orders. In addition, in view of the foregoing discussions on the principles relating to exercise of inherent powers under Section 482 of Cr.P.C., this Court does not find the present case being fit for exercising the inherent powers under Section 482 of Cr.P.C. in the present case.

16. Resultantly, the present petition filed by the petitioner is dismissed.