
(2015) 03 CAL CK 0020
In the Calcutta High Court
Case No : C.R.R. No. 159 of 2011

Reba Kalyan Mitra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Companies Act, 1956 — Section 630

Criminal Procedure Code, 1973 (CrPC) — Section 397(1), 397(3), 482

Citation : (2015) 03 CAL CK 0020

Hon'ble Judges : Shib Sadhan Sadhu, J.

Bench : Single Bench

Advocate : Tirthankar Ghosh, Jaideep Kumar Mitra and Satadru Lahiri, for the Appellant

Final Decision : Dismissed

Judgement

Shib Sadhan Sadhu, J.—This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 to set aside/quash the impugned order dated 26.08.2010 passed by the Learned Additional District and Sessions Judge, Fast Track, 3rd Court, Calcutta in Criminal Revision No. 09 of 2009 dismissing the revision preferred challenging the order dated 23.06.2008 passed by the Learned Metropolitan Magistrate, 17th Court, Calcutta in connection with Case No. C/8660 of 2006.

2. The Complaint Case No. C/8660 of 2006 was filed against the accused/petitioner under Section 630 of the Companies Act, 1956 in the Court of Learned Chief Metropolitan Magistrate, Calcutta on 21.08.2006. The allegation is that the Howrah Motor Company Limited is a Company within the meaning of the Companies Act, 1956. The Company appointed Gokuleswar Ghosh, father of the accused/petitioner as an Officer who was subsequently appointed as a wholetime Director of the Company and provided him with a free housing accommodation while he was looking after the business of the Mumbai Branch of the Company. As the Company suffered huge loss it closed down its Mumbai Branch in 1965

and Gokuleswar Ghosh was transferred from Mumbai Branch to the registered office of the Company at Kolkata. However, he continued to be in-charge of the operations of Mumbai region and from time to time he visited Mumbai for furtherance of company's business and for that the company permitted him to occupy the company's flats being Flat Nos. 3 and 4 on the second floor, Laxmi Building at premises No. 35/37, J.S.S. Road, Kennedy Bridge, Mumbai-400004. On 07.01.1984 Gokuleswar Ghosh died in harness. The petitioner/accused is his daughter and she has been illegally and wrongfully using and occupying the said flats. The company repeatedly requested the accused/petitioner to return and/or deliver vacant possession of the said flats but she failed and neglected/or refused to hand over the vacant possession of the said flats to the Company. She is in illegal and wrongful occupation of the said flats and she has been wrongfully withholding the said flats which are the property of the company. She has no legal right to use or occupy the said flats and so she is in wrongful possession of the said flats. It was further alleged that in the aforesaid manner the accused/petitioner has committed an offence punishable under Section 630 of the Companies Act, 1956 for which she should be tried and punished according to law. Annexure-A(Page-18) is the complaint in that case.

3. On receipt of the petition of complaint, the Learned Chief Metropolitan Magistrate, Calcutta took cognizance of the offence and transferred the case to the Learned Metropolitan Magistrate, 17th Court, Calcutta, for disposal. Thereafter, he proceeded with the case and after examining the complainant and other witnesses issued process against the accused/petitioner. After appearance the accused/petitioner filed a petition on 08.02.2007 challenging the maintainability of the proceedings for want of jurisdiction and prayed for dismissal of the case. The Learned Magistrate, rejected such petition holding that the Court has jurisdiction to entertain the case and the case is well-maintainable. Being dissatisfied with such order, the petitioner/accused preferred a Revision being Criminal Revision No. 09 of 2009 before the Learned Additional District and Sessions Judge, Fast Track, 3rd Court, Calcutta who by passing the impugned order dated 26.08.2010 dismissed the revision. He observed that the Learned Metropolitan Magistrate, 17th Court, Calcutta did not commit any wrong or illegality by passing the impugned order which is very much just, proper and legal in the eye of law and he, therefore, found no reasons to interfere. Being aggrieved by the said order, the petitioner has now approached this Court with the instant Revisional Application.

4. I have heard Mr. Tirthankar Ghosh, Learned Advocate appearing on behalf of the petitioner and Mr. Milan Mukherjee, Learned Senior Advocate appearing on behalf of the Opposite Party No. 2. I have also perused all the available materials on record including the impugned order and judgment with meticulous care.

5. Mr. Ghosh, Learned Advocate appearing on behalf of the petitioner, submitted that the Learned Sessions Judge, erroneously affirmed the order passed by the Learned Magistrate without appreciating that the petitioner filed a Civil Suit in

the year 2003 in Mumbai over the self same property in which an injunction order was passed and that order of injunction is still subsisting. So the instant Criminal Case is a counter blast with malafide intention to harass the petitioner. He further submitted that since the disputed property of the instant proceeding is located at Mumbai, the Learned Magistrate has no jurisdiction within the scope and ambit of the Code of Criminal Procedure, 1973 to entertain the complaint or to hold the trial, merely because the complainant Company has its office in Kolkata. Therefore according to him the impugned order is bad in law and is liable to be set aside. He cited a decision reported in *Vijai Kapur Vs. Guest Keen Williams Ltd.*, in support of his submission.

6. Mr. Mukherjee, Learned Senior Advocate appearing on behalf of the O.P. No. 2, on the other hand submitted that merely because the accused/petitioner had filed a Civil Suit in Mumbai it cannot be said that the Civil Court was in seisin of bonafide dispute between the parties and the criminal Court is debarred from proceeding with the complaint filed under Section 630 of the Companies Act, 1956 and it cannot be stigmatized to be a counter blast. He further submitted that the Learned Metropolitan Magistrate, has held after hearing both the parties that the Court has jurisdiction to entertain the case and that the case is maintainable against the accused. Against such order, the petitioner preferred revision which was dismissed by the Learned Additional Sessions Judge, after concurring with such findings. Therefore, the petitioner is not entitled to reagitate the same issue before this Court invoking the jurisdiction under Section 482 of the Cr.P.C. He submitted yet further that the present petitioner filed a Special Leave Petition before the Hon"ble Supreme Court praying for transfer of the complaint case being case No. C/8660 of 2006 from the Court of Learned Metropolitan Magistrate, 17th Court, Calcutta to a competent Court of Learned Metropolitan Magistrate, Mumbai mainly on the ground of want of jurisdiction as the property in question is located in Mumbai. The Hon"ble Supreme Court was pleased to dismiss the said Transfer Petition after hearing the Learned Counsel appearing for the parties and observing that "We do not find any merit in this Transfer Petition which is, accordingly, dismissed". Therefore, according to him the instant application under Section 482 Cr.P.C. is absolutely barred as the contention raised herein have been rejected by the Hon"ble Supreme Court on merit in the Special Leave Petition. He, thus, concluded by urging that the instant Revisional Application be dismissed. He relied on the decision reported in *Atul Mathur Vs. Atul Kalra and Another*, in support of his submission.

7. In reply Mr. Ghosh, Learned Counsel appearing on behalf of the petitioner contended that the Special Leave Petition was simply dismissed in limine by the Hon"ble Supreme Court without making any comment on the correctness or otherwise of the grounds or the subject matter of the petition for which leave was sought. Therefore according to him it was a non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal. Thus, it cannot be said that the said order of the Hon"ble Supreme Court has become final so as to dislodge the instant Revisional Application under Section 482 of the

Cr.P.C. He relied on the decision reported in V.M. Salgaocar and Bros. Pvt. Ltd. Vs. Commissioner of Income Tax, in support of his contention.

8. On hearing both sides and on giving a close and critical look into the Revisional Application and its Annexures I find with surprise that the petitioner has not annexed the copy of her application dated 08.02.2007 filed by her before the Learned Metropolitan Magistrate, 17th Court, Calcutta challenging the maintainability of the case. Be that as it may, the said petition was dismissed on 23.06.2008 on merits. She preferred a revision against the order of dismissal but could not get any relief and the revision was also dismissed being devoid of any merit. Feeling aggrieved with the order of the Learned Additional Sessions Judge, this petition has been filed on the same and identical grounds on which the first revision was filed.

9. In the case of Dharampal and others Vs. Smt. Ramshri and others, , the Hon''ble Supreme Court was pleased to hold that Learned Session Judge's powers under Section 397(3) Cr.P.C. while hearing the revision, are equivalent to that of High Court and any one cannot avail of two opportunities of filing revision under the garb of Section 482 Cr.P.C. When once his revision was found unsubstantial by the Learned Sessions Judge under Section 397(1) Cr.P.C., then the remedy under Section 482 Cr.P.C. is barred and he cannot file this petition.

10. So in view of the above, this petition is legally barred and is not maintainable under Section 482 Cr.P.C.

11. That apart the instant application is also barred in view of the order of dismissal passed by the Hon''ble Supreme Court in Transfer Petition (Crl) No. 102 of 2009. It appears that by filing such Transfer Petition the petitioner prayed for transfer of the instant complaint case pending before the Learned Metropolitan Magistrate, 17th Court, Calcutta, West Bengal, to the corresponding Competent Court of Learned Metropolitan Magistrate, Mumbai, Maharashtra, principally on the ground that no cause of action arose at Calcutta for filing a complaint case under Section 630 of the Companies Act, 1956 by the Respondent given the fact that the property in question is in Mumbai. It further appears that the Hon''ble Supreme Court rejected such prayer by passing the following order:

"We have heard learned Counsel appearing for the parties.

We do not find any merit in this Transfer Petition, which is, accordingly, dismissed."

Therefore, it is crystal clear that the aforesaid order passed by the Hon''ble Supreme Court is a speaking order and on merits.

12. The facts of the present case do not warrant any interference under Section 482 Cr.P.C. being a second revision under the garb of Section 482 Cr.P.C. The present petition is neither maintainable nor is there any merit in the same. Accordingly, the present petition is dismissed on both counts, i.e., on the question of maintainability as well as on merits.

13. Accordingly, this petition is dismissed. No order as to costs.

14. Keeping in view the age of the case and also the nature of the offence, the Learned Metropolitan Magistrate, 17th Court, Calcutta is directed to dispose of this case finally as expeditiously as possible without giving any unnecessary adjournment to either of the parties but not later than three months from the date of communication of this order.

15. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.