

(2015) 03 DEL CK 0118

In the Delhi High Court

Case No : Criminal M.C. Nos. 1258, 1259, 1260, 1261, 1262, 1264, 1269, 1280, 1281, 1282 and 1283/2015

Santosh Dhiraj Pathak

APPELLANT

Vs

Technology Development Board

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 219, 220, 397(3), 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 145(2)

Citation : (2015) 03 DEL CK 0118

Hon'ble Judges : Manmohan Singh, J.

Bench : Single Bench

Advocate : L.M. Grover, for the Appellant

Final Decision : Dismissed

Judgement

Manmohan Singh, J.

Crl. M.A. No. 4606/2015 (exemption) in Crl. M.C. No. 1258/2015, Crl. M.A. No. 4610/2015 (exemption) in Crl. M.C. No. 1259/2015, Crl. M.A. No. 4612/2015 (exemption) in Crl. M.C. No. 1260/2015, Crl. M.A. No. 4614/2015 (exemption) in Crl. M.C. No. 1261/2015, Crl. M.A. No. 4616/2015 (exemption) in Crl. M.C. No. 1262/2015, Crl. M.A. No. 4619/2015 (exemption) in Crl. M.C. No. 1264/2015, Crl. M.A. No. 4628/2015 (exemption) in Crl. M.C. No. 1269/2015, Crl. M.A. No. 4651/2015 (exemption) in Crl. M.C. No. 1280/2015, Crl. M.A. No. 4653/2015 (exemption) in Crl. M.C. No. 1281/2015, Crl. M.A. No. 4656/2015 (exemption) in Crl. M.C. No. 1282/2015 and Crl. M.A. No. 4658/2015 (exemption) in Crl. M.C. No. 1283/2015,

Exemption allowed, subject to just exceptions.

The applications are disposed of.

Crl. M.C. No. 1258/2015 and Crl. M.A. No. 4605/2015 (for stay), Crl. M.C. No. 1259/2015 and Crl. M.A. No. 4609/2015 (for stay), Crl. M.C. No. 1260/2015 and

Crl. M.A. No. 4611/2015 (for stay), Crl. M.C. No. 1261/2015 and Crl. M.A. No. 4613/2015 (for stay), Crl. M.C. No. 1262/2015 and Crl. M.A. No. 4615/2015 (for stay), Crl. M.C. No. 1264/2015 and Crl. M.A. No. 4618/2015 (for stay), Crl. M.C. No. 1269/2015 and Crl. M.A. No. 4627/2015 (for stay), Crl. M.C. No. 1280/2015 and Crl. M.A. No. 4650/2015 (for stay), Crl. M.C. No. 1281/2015 and Crl. M.A. No. 4652/2015 (for stay), Crl. M.C. No. 1282/2015 and Crl. M.A. No. 4655/2015 (for stay) and Crl. M.C. No. 1283/2015 and Crl. M.A. No. 4657/2015 (for stay),

1. Pursuant to a loan agreement dated 16th March, 1998 between the respondent and M/s. Gujrat Oleo Chem Ltd., the said company was granted loan upon terms and conditions stated in the said agreement. The petitioner is the Chairman and Managing Director of the said Company who had entered into Settlement Deed dated 18th July, 2005 wherein it was agreed to pay the alleged amount in 60 months as per schedule. The cheques were issued by the petitioner with the assurance that the same would be honoured on its due presentation. However, upon presentation of the said cheques, the same were dishonoured and the petitioner failed to pay the cheque amount despite of service of legal notice. Hence, 18 criminal complaints were filed by the respondent/complainant under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner.

2. In the present 11 petitions, on 28th November, 2014, the applications were filed by the petitioner before the learned Trial Court seeking return of the said complaint cases to the respondent/complainant in view of the decision passed by the Supreme Court in the case of Dashrath Rupsingh Rathod Vs. State of Maharashtra, . The said applications were dismissed on the same day, subject to cost of Rs. 5,000/-. The petitioner thereafter filed the revision petition challenging the said order passed by the learned Trial Court dated 28th November, 2014. The revision petitions were also dismissed by passing a comprehensive detailed order dated 20th February, 2015. The present petitions are being filed under Section 482 Cr.P.C. for quashing/setting-aside both the orders dated 28th November, 2014 and 20th February, 2015.

3. The Supreme Court in the case of Rajan Kumar Machananda Vs. State of Karnataka, held as under:--

"2. Heard learned Counsel for the parties. The respondent State had challenged the order before the Court of Sessions when the learned Magistrate before whom the matter was proceeding directed release of the truck in favour of the appellant. The Revisional Court dismissed the petition of the State. A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise

of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld." 4. In another case titled as Dharampal and others Vs. Smt. Ramshri and others, , the Supreme Court held as under:--

"4. There is no doubt that the learned Magistrate had committed an error in passing the subsequent orders of attachment when the first attachment was never finally vacated and had revived the moment the revision application filed against it was dismissed by the learned Sessions Judge. It appears that none of the parties including the Sessions Judge realised this error on the part of the Magistrate. The learned Sessions Judge had also committed a patent mistake in entertaining revision application against the fresh orders of attachment and granting interim stays when he had dismissed revision application against the order of attachment earlier. Let that be as it is. The question that falls for our consideration now is whether the High Court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of the 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr. R. No. 180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under S. 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of Ist respondent. On this short ground itself, the impugned order of the High Court can be set aside." 5. It is clear from the above said judgments that the second revision under the garb of the quashing proceedings is not maintainable as there is no provision of second revision petition under Section 397(3) Cr.P.C. which is statutory bar under the said provision.

6. The Revisional Court in paras 12 to 16 has noted down that the notice under Section 138 of NI Act was served upon the accused on 19th July, 2013. The accused subsequently filed an application under sections 219 and 220 Cr.P.C. On 28th November, 2013, an application under Section 145(2) of NI Act was filed by accused in CC No. 25/04/13 titled as Technology Development Board v. Santosh Dhiraj Pathak which was allowed. It further shows that on 21st May, 2014, all the connected matters between the parties were listed for the purpose of evidence. Copy of post summoning evidence was already delivered to accused. As already

mentioned, the application under Section 145(2) of NI Act was allowed and the matter was directed to be listed for complainant's post notice evidence.

7. The Apex Court in the case of "Dashrath Rupsingh Rathore v. State of Maharashtra, being Crl. Appeal No. 2287 of 2009, decided on 1st August, 2014, observed in para 22 that the category of complaint cases, where proceedings have gone to the stage of Section 145(2) of the Act or beyond shall be deemed to have been transferred from the Court ordinarily possessing territorial jurisdiction, as clarified therein, to the Court where it is presently pending. Thus, it is only when the stage of proceedings in cases filed under Section 138 of the Act has reached the stage of Section 145(2) of the Act or beyond thereof, such case shall continue to be dealt with by the Court where it is pending trial.

8. Under these circumstances, the present cases have gone to the stage of section 145(2) of the Act and beyond thereof. Thus, the submission of the learned counsel for the petitioner is without any force. All the petitions are accordingly dismissed with the agreement of the finding arrived at by the Revisional Court i.e. ASJ, Delhi, in the judgment dated 20th February, 2015.