

(2019) 07 CAL CK 0049

In the Calcutta High Court

Case No : Criminal Revision (CRR) No.1260, 1261, 1262 Of 2019

Sham Ganpat Chougule & Anr

APPELLANT

Vs

State Of West Bengal & And Anr

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 299
Negotiable Instruments Act, 1881 — Section 138, 141

Citation : (2019) 07 CAL CK 0049

Hon'ble Judges : Suvra Ghosh, J

Bench : Single Bench

Advocate : Ayan Bhattacharya, Karan Dudhwewala, Vikram Wadehra, Soumava Ghosh, Amar Kumar Dudhwewala, Rudradipto Nandi, Somopriyo Chowdhury, Ajay Agarwal, Baisali Basu

Final Decision : Dismissed

Judgement

Suvra Ghosh, J

1. In the three revisional applications, the judgments delivered by the Additional District and Sessions Judge, Fast Track Second Court, Bichar Bhavan,

Calcutta, in revisional applications pertaining to complaints against the accused/petitioners u/s 138/141 of the Negotiable Instruments Act 1881 are

under challenge.

2. The opposite parties lodged complaints against the accused company Indage Vinters Limited and the petitioners who are the former Chairman,

former Managing Director, former V.P Finance and former Chief Financial Officer of the company respectively. The cases are pending before the

court of the Learned Chief Metropolitan Magistrate, Calcutta for examination of the petitioners u/s 313 of the Code. The petitioners moved

applications u/s 311 of the Code before the Trial Court for recalling the sole witness for cross examining him further on the ground that there was a change of learned advocate in the mean time and the newly appointed learned advocate intended to further cross-examine the witness on some vital issues. Attention of the Court was also drawn to the order of the Bombay High Court in company petition no. 960/2009 whereby the accused company was ordered to be wound up and official liquidator appointed vide order dated March 19, 2010. The trial court, after consideration of the contention of the petitioners, rejected their prayers u/s 311 of the Code and issued notice upon the official liquidator for representation of the accused company. The trial court split up the proceedings of the cases and fixed a date for examination of the present petitioners u/s 313 of the Code besides awaiting response from the official liquidator. The said orders dated 06-11-2017 in the three cases were assailed by the petitioners before the revisional court.

3. The other order under challenge was passed on 10-01-2018 whereby the trial court allowed the prayer for adjournment of the petitioners as a last chance and directed the parties to come prepared on the next date of hearing.

4. The revisional court, by the impugned judgments, dismissed the applications of the petitioners and affirmed the orders of the trial court. The petitioners have preferred the present revisions against the said judgments of the revisional court.

5. It is trite law that more than one order of a particular court which have some nexus with one another can be challenged by way of a single

revisional application. In the cases in hand, no substantive order was passed on 10-01-2018 which warranted a revision. The record clearly indicates

that the petitioners were in fact aggrieved by the orders dated 06-11-2017. The said orders were not challenged by the petitioners within the statutory

period of time. Certain observations made in the impugned judgments are relevant. The revisional court observed that only the orders dated 10-01-

2018 were challenged in the cause title of the applications before the said court and order dated 06-11-2017 was deliberately not mentioned so as to

get the revisional application admitted without praying for condonation of delay in filing the same. The revision with regard to order dated 06-11-2017

was obviously barred by limitation and the petitioners very cleverly combined the

subsequent orders dated 10-01-2018 in the application in order to bypass the rigours of the Limitation Act. The least that the petitioners should have done was to pray for condonation of delay in filing the application before the revisional court. Instead, they chose to use the orders dated 10-01-2018 by tagging the same with the earlier orders despite the fact that the orders dated 10-01-2018 required no interference at all. Be that as it may, as the cases are pending for a pretty long time, the revisional applications ought to be disposed of on merit in the interest of justice and not remanded back to the first revisional court merely on the ground of limitation.

6. On merits, the petitioners have assailed the impugned judgments on several counts. Opposite party no. 2 has supported the impugned judgments and has prayed for affirming the same. The State is also represented.

7. Referring to Section 299 of the Code, the petitioners submit that a trial can be split only when one of the accused persons has absconded and there

is no immediate prospect of his arrest. Reliance is placed on Jayendra Vishnu Thakur v/s. State of Maharashtra and another reported in (2009) 7

Supreme Court Cases 104. In the said judgment, the Honâ??ble Supreme Court has dealt with Section 299 of the Code and the term

â??absconding.â? It is held in the said judgment that â??for the purpose of invoking Section 299 of the Code the learned Designated Judge was

required to hold on the date of passing of the order, namely, 01-01-1994 that he had been absconding on that dateâ?. The ratio decidendi of the said

judgment can be distinguished from the factual matrix of the present case. Herein, the accused company was all throughout represented u/s 305 of the

Code and only on 04-09-2017, the petitioners brought to the notice of the trial court a copy of order dated 19-03-2010 in company petition no. 960/2009

before the Bombay High Court to the effect that the accused company was ordered to be wound up and official liquidator was appointed. Upon such

submission being made, the trial court issued notice upon the official liquidator on 06-11-2017 for representation of the accused company and

continued to proceed against the remaining accused persons/the petitioners. So, the question of abscondence of the accused company never arose in

the cases before the trial court. The petitioners have relied upon a judgment of the Delhi High Court M.L Gupta and others v/s. Ceat Financial

Services Limited reported in 136 (2007) DLT 308 wherein the court has observed

that when the complaint under Section 138 of the Negotiable

Instruments Act is filed against the company and its Directors and during the pendency of this complaint, orders of winding up of the company are

passed, even if the complaint cannot continue against the company, the proceedings can still continue against the Directors.

8. In the present case, the accused company was wound up on 19-03-2010 and the cause of action of the case arose prior to that. The trial Court

called upon the official liquidator to represent the accused company as soon as the incident of winding up was brought to its notice, and at the same

time, proceeded with the cases against the petitioners by splitting up the cases. Given the factual scenario of the cases, the trial court committed no

error in splitting up the cases for expeditious disposal of the same and no prejudice is likely to be caused to the petitioners for such decision of the trial

court.

9. The petitioners have also relied upon the observation of the Hon'ble Supreme Court in (2012) 5 Supreme Court Cases 661 wherein the

Hon'ble Supreme Court has held that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an

accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has

been stipulated in the provision itself.

10. In the present cases, the accused company has been arraigned as an accused along with its officials and the company was represented all

throughout u/s 305 of the Code. So the trial of the cases cannot be said to be vitiated on such ground.

11. The other limb of argument of the petitioners is that the trial court ought to have allowed their applications u/s 311 of the Code and permitted them

to cross-examine the witness further. It transpires from the copy of petition filed by the petitioners u/s 311 of the Code before the trial court that the

petitioners sought to recall the complainant's witness for further cross-examination on the ground that there was a change of brief and the newly

appointed learned advocate intended to cross-examine the witness further. The petition appears to be absolutely vague and no specific questions

intended to be asked to the witness were formulated. Cross-examination of the witness was concluded on 30-08-2012 and it was only sometime in

2017 when the cases were fixed for the examination of the petitioners u/s 313 of the Code that the petitioners woke up to file the petitions u/s 311 of

the Code. Such delayed and vague prayer can under no circumstances be entertained merely on the ground of change of brief and it can in fact be

inferred that the petitioners took recourse to such a prayer only to protract the proceedings, in an unfair manner. The trial court rightly refused to

accede to such baseless prayer of the petitioners. The revisional court, in the impugned judgments, considered all the relevant issues and there is no

illegality or irregularity in the impugned judgments which calls for interference by this Court. The present revisional applications are devoid of any

merit and are liable to be dismissed.

12. Before parting with the record, it is necessary to point out that a co-ordinate bench of this Court directed the trial court to conclude the entire

proceedings as expeditiously as possible, preferably within three months from this date, the order being passed on 26-07-2017. Keeping in mind

the age of the cases, the trial court is requested to dispose of the cases as expeditiously as possible without granting any unnecessary adjournment to

either party.

13. CRR 1260 of 2019 with CRR 1261 of 2019 and CRR 1262 of 2019 are dismissed accordingly.

14. Urgent certified website photocopies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual

formalities.