

(2009) 12 CAL CK 0050
In the Calcutta High Court
Case No : C.R.R. No. 2127 of 1999

Shiva Wire and Steel Products Ltd.

APPELLANT

Vs

Rashtriya Ispat Nigam Ltd.

RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 143

Citation : (2011) 5 CHN 374

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : ;Sandip Ghosal, for the Respondent

Judgement

Ashim Kumar Roy, J.—Invoking section 482 of the Code of Criminal Procedure, the petitioners has come up before this Court for quashing of their prosecution relating to the offence punishable u/s 138/141 of the Negotiable Instruments Act. This criminal revision was pending before this Court since 1999. In the meantime, in February, 2005 this matter came up for hearing before another Bench of this Court and the learned Advocate of the petitioners appeared and expressed his desire to retire from the case as he has no instruction in the matter. When this Hon''ble Court directed issuance of administrative notice, but the service of the administrative notice could not have been effected for one reason or other. Thereafter, on June 9, 2009 this Court once again directed issuance of administrative notice. Since the office cum factory premises of the petitioners was found to be closed due to a lock out, the service was effected by pasting the notice on the gate of the factory premises in presence of the independent public witnesses. The aforesaid matter was then taken up for hearing by this Bench on October 20, 2009 although Mr. Sandip Ghosal for the complainant/opposite party was very much present in Court, but in spite of repeated calls none appeared on behalf of the accused/opposite party.

2. The only question that arises for decision in the instant criminal revision, is

this, whether a criminal proceeding is liable to be quashed merely because a civil suit over the self-same dispute between the parties is pending before the High Court.

3. It is now well-settled that pendency of a civil suit even before a higher Court is no ground for quashing of a criminal proceeding even though both are arising out of same set of facts as the cause of action arises out of the same are distinct and different. The test is to see whether on the allegations made in the complaint the offence alleged has been constituted or not. In the case of *Kamala Devi Agarwal vs. State of West Bengal & Ors.*, reported in 2002 SCC (Cri) 200, it was held by the Apex Court a criminal proceeding cannot be thwarted at the initial stage merely because civil proceeding is also pending. Pendency of a civil action in a different Court even before a Court higher in status and authority cannot be the basis of quashing of a criminal proceeding.

4. In the case of *Shree Krishna Agency vs. State of Andhra Pradesh & Anr.*, reported in 2009 (1) SCC (Cri) 241, the Apex Court held that there is no bar to the simultaneous continuation of a criminal proceeding and a civil proceeding arising out of two different cause of action. In the said case the question was whether a proceeding u/s 138 of the Negotiable Instruments Act be quashed on the ground that the appellant had already taken recourse to an arbitration proceeding and Apex Court held in negative and as above.

5. In the case of *Gurcharan Singh & Anr. vs. Allied Motors Ltd. & Anr.*, reported in 2006 Cr. LJ 360, the Apex Court refused to stay a criminal proceeding u/s 138 of the Negotiable Instruments Act on the ground of pendency of a civil proceeding. In the said case a complaint was filed u/s 138 of the Negotiable Instruments Act for dishonour of a cheque and the self-same cheque was the subject matter of an arbitration proceeding. However, the Apex Court held the arbitration proceeding for recovery and criminal proceeding u/s 138 of the Negotiable Instruments Act are based on independent cause of action and award, if any, passed in favour of the accused in such arbitration proceedings be a defence in criminal proceeding but same cannot be the ground to stall or stay the criminal proceeding u/s 138 of the Negotiable Instruments Act. Therefore, the law as it stands that pendency of a civil suit even before a higher Court neither be the ground for quashing of a criminal proceeding nor be a ground to stall or stay such criminal proceeding till the disposal of the civil case, as both the cases arising out of independent cause of action.

6. In view of above, this criminal revision has no merit and accordingly stands dismissed.

7. In the case at hand, the complaint was filed in the year 1995, but till the trial has not been concluded, although more than 14 years have been elapsed. Such pendency of the trial is contrary to the mandate of section 143 of the Negotiable Instruments Act. Accordingly, the Learned Trial Court is directed to conclude the trial within three months from the date of appearance of the accuseds in the

Court. The learned Court is further directed to take all necessary steps in accordance with the provisions of the Code of Criminal Procedure to compel the appearance of the accuseds in Court for their trial. The learned Court is directed to proceed with the trial to be continued from day to day until its conclusion and no adjournment shall be granted unless the Court finds the same is necessary for ends of justice.

8. The interim order, if any, stands vacated.

9. Office is directed to communicate this order to the learned Court below at once. Criminal Section is directed to deliver urgent photostat certified copy of this judgement to the parties, if applied for, as early as possible.