

(2010) 10 CAL CK 0033
In the Calcutta High Court
Case No : C.R.R. No. 1863 of 2010

The Statesman Limited

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2010) 10 CAL CK 0033

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Tirthankar Ghosh, Amitava Nag, Satadru Lahiri and Supriya Sarkar, for the Appellant; Sobhendu Sekhar Roy, for State and Mrinal Kanti Mukherjee, for O.P. No. 2, for the Respondent

Judgement

Ashim Kumar Roy, J.—The subject matter of challenge in the instant criminal revision is an order passed by the Learned Additional Chief Metropolitan Magistrate, Calcutta rejecting the petitioner's application u/s 311 of the Code of Criminal Procedure relating to a proceeding under Sections 138/141 of the Negotiable Instruments Act.

2. It has been vehemently urged by the learned advocate of the petitioner that during the cross-examination of the P.W.1 the authorized representative of the payee through whom the aforesaid complaint case has been instituted, the said witness admitted that he received a demand draft equivalent to the amount of the impugned cheque as per the meeting held on June 21, 2005, but the witness was silent on the point of statement of his bank account and never examined anybody from the bank as a witness. According to him examination of defence witness to bring on records such bank statement is very much essential for just decision of the case.

The Learned Counsel appearing on behalf of the State as well as the Learned Counsel appearing on behalf of the complainant/opposite party vehemently

opposed such contention and submitted the order impugned does not suffer from any illegality or infirmity and any interference with the same is not at all called for.

3. Now, having gone through the impugned order, I find the Learned Magistrate rejected such application on the ground the same was moved at a very belated stage and he was of the further opinion that the examination of the witnesses as prayed for is at all essential for just decision of the case.

4. It is beyond any debate that the provisions of Section 311 of the code of Criminal Procedure can be invoked at any stage before the pronouncement of judgment when it is found that same is necessary for just decision of the case. At the same time, it is also well settled that such provisions cannot be invoked for the benefit of any party so as to enable them to fill up the lacunas in its case. The stage at which such provision is invoked, is not at all material when Court found that taking recourse to such provision is essential for just decision of the case. In the case at hand, it appears that the cross-examination of P.W.1 was concluded on August 28, 2008, thereafter, the examination of the defence witness was concluded on August 17, 2009 and a date for delivery of judgment was fixed and at that stage an application u/s 311 of the code was moved on May 19, 2010. Therefore, it is an admitted position the petitioner is seeking for examination of defence witness nearly after one year and nine months from the date of cross-examination of the P.W.1 and after examination of defence witness was completed on August 17, 2009 on the pretext the examination of defence witness is necessary with reference to some materials which have been divulged during the cross-examination of the P.W.1.

5. According to the averment made in Paragraph 5 of the application u/s 311 of the Code, the P.W.1 in his cross-examination stated that he received a demand draft equivalent to the amount of the impugned cheque/cheques, as per the meeting held on June 21, 2005, but he was silent on the point of statement of accounts of his banker and he has not produced the bank as a witness, though he has encashed and realised the said draft amount as such to bring into records such bank statement, the examination of defence witness is very much essential.

6. Now, having gone through the cross-examination of the P.W.1, with reference to which, the petitioner is praying for examination of defence witness u/s 311 of the Code, I find the relevant portion of the said cross-examination are as follows;

Before filing this case I have filed another case being Case No. 988/04 pending before the Learned Metropolitan Magistrate, Calcutta in respect of two cheques amounting to Rs. 18 lakhs as principal and Rs. 1,62,000/- as interest. There is a meeting held in the Statesman on June 21, 2005 for compromising the case pending before the Learned Metropolitan Magistrate, 9th Court, Calcutta as per effect of the meeting the cheque was issued to me by the Statesman to the amount of Rs. 18 lakhs and Rs. 1,62,000/- which was subject matter of that case. Apart from the said two D.D., five postdated cheques being No. 019843

dated 3.8.2005 for Rs. 30,000/ -, 109844 dated 3.9.2005 for Rs. 93,750/ -, 019845 dated 3.10.2005 for Rs. 93,750/ -, 019846 dated 3.10.2005 for Rs. 93,750, 019846 dated November 3, 2005 for Rs. 93,750/ - and 019847 dated 3.12.2005 for Rs. 93,750/ - were received by me. Not a fact that in the said meeting on June 21, 2005 I agreed to withdraw the case being No. 988/ 04 pending before the Learned Metropolitan Magistrate, 9th Court, Calcutta on receiving the said D.D. and five cheques amounting D.D. to Rs. 18 lakhs and Rs. 1,62,000/ - on 6.7.2008.

It may be noted the deposition of P.W.1 was produced before this Court by the learned advocate of the petitioner during the hearing of this case and same is lying with the Court records.

7. Therefore, it is not correct to say that during his cross-examination the P.W.1 admitted that he received the demand drafts equivalent to the amount of the impugned cheque or cheques as per the meeting held on June 21, 2005. It is also pertinent to note that in his cross-examination the complainant has admitted that he had received two demand drafts, one for Rs. 18 lakhs and another for Rs. 1.62 lakhs in connection with the case pending before the Learned Metropolitan Magistrate, 9th Court, Calcutta. However, in this case five cheques are involved, one is of Rs. 30,000/ - and four others each of Rs. 93,750/ - the aggregate amount of those cheques worked out to be Rs. 4.05 lakhs only, apart from the fact that the petitioner received the said demand drafts of Rs. 18 lakhs and Rs. 1.62 lakhs in connection with different case. In my opinion, examination of defence witness on the ground as prayed for is not at all necessary for just decision of the case and more particularly when the proceeding in question relates to dishonour of five different cheques.

This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

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