

(2022) 05 DEL CK 0148

Delhi High Court

Case No: Criminal Miscellaneous Case No. 790 Of 2020, Criminal Miscellaneous
Application No. 3267 Of 2020

Harish Kathuria

APPELLANT

Vs

State & Anr.

RESPONDENT

Date of Decision: May 24, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 21, 142, 226, 227
- Code Of Criminal Procedure, 1973 - Section 251, 262, 482
- Consumer Protection Act, 1986 - Section 27, 27(1)(b), 27(3), 27A, 27A(2)

Hon'ble Judges: Asha Menon, J

Bench: Single Bench

Advocate: Neeraj Grover, G.M. Farooqui, Asutosh Lohia, Rohan Dewan, Varun Raghavan

Final Decision: Disposed Of

Judgement

Asha Menon, J

1. This petition has been filed under Section 482 of the Cr.P.C. for quashing of the order dated 27th January, 2020 passed by the State Consumer

Disputes Redressal Commission, (â€™SCDRCâ€™™, for short), New Delhi in Execution Petition No.39/2018.

2. The brief history of the case, may be usefully adverted to at this juncture. The respondent No.2/Sh. Prashant Somani had filed a complaint in the

year 2015 against M/s Harsha Buildcom Pvt. Ltd. (â€™HBPLâ€™™, for short) and its Director, namely, the petitioner, seeking refund of an amount of

Rs.18,50,000/-. This amount had been deposited by the complainant/respondent No.2 with the petitioner in March, 2012 for purchase of a commercial

premises in a building owned by HBPL. In the complaint, HBPL was accused of unfair trade practice, as it had not given the possession of the

property in time, while admitting that, within six months, it was the complainant/respondent No.2 who had himself sought refund and cancellation of the

allotment.

3. During the pendency of the complaint before the SCDRC, HBPL entered a belated appearance and the right to file the written statement was

closed. The parties were referred to mediation, but the complainant/respondent No.2 apparently did not participate in the proceedings. According to

the petitioner, though an opportunity to file the written statement was sought, the SCDRC did not grant such an opportunity and allowed the complaint

of the complainant/respondent No.2, directing the petitioner and his Company to refund the entire amount of Rs.18,50,000/- alongwith interest @ 12%

per annum to the complainant/respondent No.2, awarding a further sum of Rs.2,00,000/- towards mental agony, pain and harassment. This order was

passed on 23rd March, 2018. An appeal was preferred only in December, 2018 with a delay of around 100 days and, therefore, the National

Consumer Disputes Redressal Commission (NCDRC, for short) declined to condone the delay vide order dated 13th December, 2018,

consequently, dismissing the appeal.

4. In the meantime, the complainant/respondent No.2 filed an execution petition, on which, notices were issued to the petitioner and his Company on

20th July, 2018. The proceedings in these execution proceedings culminated in the impugned order dated 27th January, 2020, whereby the petitioner

was convicted under Section 27 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") and was sentenced to

imprisonment of one year or till the payment of the entire amount, whichever was earlier.

5. Mr. Asutosh Lohia, learned counsel for the complainant/respondent No.2 has raised a preliminary objection that the present petition was not

maintainable in view of the fact that the Act provided for a statutory appeal and an hierarchy for filing of the same. It also provided for a limitation

period. Reliance has been placed on the judgment of *Cicily Kallarackal v. Vehicle Factory*, (2012) 8 SCC 524 in support of this contention.

6. It is further argued by learned counsel for the complainant/respondent No.2 that the very fact that the petitioner had requested suspension of the sentence, to file an appeal under Section 27A(1)(b) of the Act, reflected awareness of the nature of the remedy available to the petitioner, despite which, the present petition had been filed. It is also submitted that the Act is a Code in itself and the prescribed procedure ought to be adhered to.

7. The judgments relied upon by the petitioner, namely, *Baburam Prakash Chandra Maheshwari (supra)* and *M.P. State Agro Industries Development Corpn. Ltd. v. Jahan Khan*, (2007) 10 SCC 88 are not applicable to the present matter as those relate to writ petitions filed under Article 226 of the Constitution of India, whereas, the present petition has been filed under Section 482 Cr.P.C.

8. In response to this preliminary objection, Mr. Neeraj Grover, learned counsel for the petitioner, submitted that in *Kamlesh Aggarwal Vs. Narayan Singh Dabas*, (2015) 11 SCC 661, the Supreme Court had not held that the Act was a complete Code. Learned counsel for the petitioner further relied on *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parish Ad Now Zila Parishad*, (1969) 1 SCR 518 to submit that even where a statutory appeal had been provided, where there was a complete go-by to the principles of natural justice, the petition was maintainable. The petitioner was entitled to the protection of his fundamental rights under Article 21 of the Constitution of India.

9. It was the contention of the learned counsel for the petitioner that the procedure adopted by the SCDRC while imposing a sentence of imprisonment for one year or till the payment of the entire amount i.e., Rs.30,52,000/- out of Rs.37,52,000/-, whichever was earlier, was illegal. It is his contention that the charge was served upon him on 27th January, 2020 and, in an absolute hurry, the order of conviction and sentence was passed on the same day. Thus, no effective opportunity had been afforded to the petitioner to submit his defence and lead evidence.

10. It was further submitted that under the Code of Criminal Procedure (â€œCr.P.C.â€™, for short), in summary trial proceedings, a sentence of

imprisonment of not more than three months could be imposed, whereas, by the impugned order, on the basis of summary proceedings, the petitioner had been sentenced to imprisonment for one year.

11. It is, therefore, submitted that when there was a violation of such grave nature, affecting the life and liberty of the petitioner, the present petition was fully maintainable and the impugned order was liable to be set aside.

12. To counter these submissions, on merits, the learned counsel for the complainant/respondent No.2 has submitted that it was improper to say that the SCDRC had acted in haste. Referring to the averments in the reply, it was submitted that the orders of the SCDRC dated 23rd March, 2018 had attained finality, despite which, till date, the petitioner had failed to refund the entire amount of Rs.18,50,000/- alongwith interest @ 12% p.a. to the respondent No.2, plus an amount of Rs.2,00,000/- awarded to him towards mental agony, pain and harassment. Only a sum of about Rs.5,32,000/- had been paid in about 20 months, and it was in this background, that on 29th November, 2019, the SCDRC concluded that there was a willful default in complying with the judgment and, therefore, found it necessary to take recourse to Section 27 of the Act.

13. Thereafter, on 2nd December, 2019, the cheque issued for a sum of Rs.2,00,000/- by the petitioner, was dishonoured due to difference in signatures. Subsequently, on 20th January, 2020, the petitioner was directed to be present on the following date of hearing which was 27th January, 2020. Thereafter, in accordance with the provisions of Section 27(3) of the Act, the SCDRC proceeded to try the petitioner summarily. The stand taken by the petitioner was duly recorded in the charge served to him on 27th January, 2020, where, he admitted his guilt. Thereupon, the SCDRC proceeded to convict the petitioner, on the substantial admission of the facts constituting the offence. Thus there was complete adherence to the prescribed procedure and the principles of natural justice. Hence, it was prayed that the petition be dismissed.

14. Much emphasis has been placed on the non-adherence to the prescribed procedures and violations of the fundamental rights of the petitioner, but it is to be noted that the petition has been filed under Section 482 Cr.P.C. and not under Article 226/227 of the Constitution of India. The prayers are

also for quashing of the orders of conviction and sentence and the charge.

15. The scope of powers under Section 482 Cr.P.C. is narrower than the powers under Article 226/227 of the Constitution of India. Merely by

contending that the nomenclature should not circumscribe the relief that is being claimed, is not a submission that is acceptable as the challenge in the

petition has been to the conclusions drawn by the SCDRC on merit, apart from challenging the order on the ground that sufficient opportunity had not

been granted to the petitioner to prove his innocence. It is clear that the contents of the petition are more akin to an appeal.

16. The first question that, therefore, requires an answer is, whether the petition is maintainable in the light of the provisions of the Act. Reference in

this regard may be made to Section 27A of the Act which provides for the appeal against the orders passed under Section 27 of the Act. The appeal

against an order of the SCDRC is to be filed before the NCDRC under Section 27A(1)(b) of the Act. What is most significant are two parts of this

provision, namely, that an appeal under Section 27 of the Act would lie both on facts and on law. Therefore, the plea taken before this Court that

proper procedure as prescribed under the Cr.P.C. has not been followed, would be adequately addressed in an appeal to the NCDRC under Section

27A(1)(b) of the Act. Furthermore, this appeal has to be filed within a period of 30 days from the orders of the SCDRC. Under Section 27A(2), no

other appeal against the order of SCDRC can be filed after approaching the NCDRC.

17. The Supreme Court in Kamlesh Aggarwal (supra) has not taken a different view. In that case, after the execution proceedings had been filed

before the District Forum, upon the dismissal of the review application, the District Forum had simultaneously sentenced the respondent in that case to

three monthsâ€™ imprisonment with fine of Rs.3,000/-. The appeal against this order was filed before the SCDRC which concluded that the

procedure of summary trial had not been adopted by the District Forum while passing the order of conviction and sentence. Therefore, the order of

conviction and sentence was set aside. A further appeal was preferred before the NCDRC which took the view that the second appeal was barred

under Section 27 or 27A of the Act which view was upheld by the Supreme Court in Kamlesh Aggarwal (supra). Yet in exercise of its power under

Article 142 of the Constitution of India, it modified the order of the SCDRC to the extent remanding the case to the District Forum to execute the decree and take penal action against the respondent by following the procedure under Section 262 read with Chapter XX and Section 251 of the Cr.P.C. in accordance with law. Thus, nowhere, the judgment prescribes that the SCDRC must try the offence under Section 27 of the Act as a summons or warrants case, as urged by the learned counsel for the petitioner, in order to urge, that there was no adherence to procedure. Also, appeals were filed as per Section 27A.

18. Even in the case of *Kishorbhai Narayandas Maherchandani v. State of Gujarat*, 2019 SCC OnLine Guj 1330, on which much emphasis has been laid by the learned counsel for the petitioner, it is to be noted that no procedure at all had been adopted, as the petitioner in that case, on being produced before the District Consumer Forum in judicial custody in some other FIR, was straightway convicted and sentenced to undergo imprisonment for three years and to pay a fine of Rs.10,000/- over and above the payment of Rs.12,01,000/- with compound interest @ 8% p.a. from the date of filing of the application, as the judgment of the Consumer Forum directing refund of a sum of Rs.12,01,000/- had become final. Thus, in that case, the summary procedure, as prescribed under Chapter XXI Cr.P.C., had not been adhered to, and, the court merely affirmed that the procedure prescribed under summary trial, had to be followed before the Consumer Forum could sentence a person.

19. The fact situation here is vastly different. The execution proceedings had been filed on 25th May, 2018. Efforts were made to execute the order of the SCDRC dated 23rd March, 2018, from December, 2018 and through 2019. On 22nd January, 2019, the petitioner paid a sum of Rs.2,00,000/-. On 27th March, 2019, the parties were referred to the Delhi Govt. Mediation and Conciliation Centre. On 31st May, 2019, mediation proceedings failed. On 3rd July, 2019, a sum of Rs.1,00,000/- was paid by the petitioner to the complainant/respondent No.2. On 8th August, 2019, a further sum of Rs.1,00,000/- had been paid to the petitioner with an offer to make further payments in installment which was not agreed to by the respondent No.2.

Several other proceedings continued in the year 2019. On 27th January, 2020, the cheque of Rs.2,00,000/- was dishonoured on the ground of signature mismatch, whereafter, the proceedings under Section 27 of the Act were initiated. Thus, clearly, the SCDRC was not in any haste to enforce the penal provisions.

20. The SCDRC has also adhered to the prescribed procedure, as the provisions of Chapter XXI of the Cr.P.C. have been followed, as the petitioner was explained the offence and his plea was recorded after which the findings and sentence had been passed. Thus, there is no violation of principles of natural justice, on the basis of which, the petitioner can claim a right to file the present petition.

21. The grievance of the petitioner in respect of facts and law, including whether the sentence of simple imprisonment of one year could be imposed by the SCDRC while conducting a summary trial, could have been very well agitated before the NCDRC. However, it is the petitioner who chose not to follow the prescribed procedure.

22. Thus, not only is the petition devoid of merits, but is also not maintainable. In the light of this conclusion, the petition is dismissed with costs of Rs.30,000/- to be paid to the respondent No.2, as this petition appears to be intended only to delay execution.

23. The petition along with the pending application stands disposed of.

24. The judgment be uploaded on the website forthwith.