(2007) 06 CAL CK 0004

Calcutta High Court

Case No: CRR No. 515A of 2007

Murari Mohan Kejriwal		APPELLANT
	Vs	
Sharawan Kumar Kejriwal		RESPONDENT

Date of Decision: June 28, 2007

Acts Referred:

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

Citation: (2007) 06 CAL CK 0004

Hon'ble Judges: Sadhan Kumar Gupta, J

Bench: Single Bench

Advocate: Ranjan Roy, Mr. Tirthankar Ghosh, Mr. Ranjit Roy and Mr. Kaushik Banerjee, for the Appellant; Sekhar Kumar Basu, Soubhik Mitter, Shiladitya Banerjee, Sanghamitra Majumdar for Opp. Party, Mr. Amit Bhattacharya, Sandipan Ganguly, Ayan Bhattacharya and Mr. Indrajit Adhikari for Added Opp. Party, for the Respondent

Final Decision: Dismissed

Judgement

Sadhan Kumar Gupta, J.
This revisional application has been preferred u/s 482 of the Criminal Procedure Code challenging the order dated 22.01.2007 passed by the learned Metropolitan Magistrate, 6th Court, Calcutta, in connection with Case No. C-877 of 2002.

2. Case of the petitioner is that the opposite party/complainant filed a petition against the petitioner and against the added opposite party for the commission of offence u/s 138 of the Negotiable Instruments Act. It was alleged in the petition of complaint that the accused persons are the Directors of M/s. Shree Hanuman Foundry and Engineering Co. Ltd. and carried on business of supply of finished goods and for that purpose they received C.I. Scrap/Pig iron from the complainant company. As a result of this an amount of Rs. 1,04,44,783 became outstanding. The complainant sent bill to the accused persons

for that amount who being the directors of the company issued three cheques in discharge of their liability. The cheques were presented to the bank on 02.09.2002 and those were dishonored and an intimation given to the complainant on 04.09.2002. On 10.09.2002 the complainant sent notice to the accused person demanding the payment of the amount covered by the cheques. But the accused persons failed and/ or neglected to make the payment towards those dishonored cheques. As such, the complainant had to file the petition of complaint before the learned Magistrate against the accused persons who was pleased to take cognizance of the offence and subsequently process was issued against the accused persons. Before the learned Magistrate the accused persons entered appearance and were granted bail and their plea was recorded. On 22.01.2007 the date was fixed for trial and on that day the complainant was cross-examined as PW1. During cross-examination of PW1 was confronted in respect of the civil suit which was pending in between the parties covering same cheques and it was also pointed out to the said witness that the bills and challans were examined by the handwriting expert who clearly opined that the signatures appearing on those bills and challans were not of the petitioner. It is the case of the petitioner that as there was very good relationship in between him and the complainant, so taking advantage of that relationship, the complainant somehow managed to obtain those cheques fraudulently. Against this act of the complainant, the petitioner already filed a criminal case.

3. During the course of hearing of the said case before the learned Magistrate, the petitioner filed a petition u/s 91 of the Criminal Procedure Code praying for issuing summons for production of those bills and challans by the complainant before the learned Magistrate. But by his order dated 22.01.2007 the learned Magistrate was pleased to reject such prayer without assigning any reason whatsoever. Being aggrieved by the said order of the learned Magistrate, this revisional application has been preferred. It has been contended by the petitioner that the learned Magistrate mechanically rejected the petition without applying his mind and without assigning any reason whatsoever. The copy of the bills and the challans are very much relevant for the purpose of the complainant to establish his case, as made out in the defence. The petitioner could obtain the Xerox copies of those documents which were filed in the civil suit and there was a report to the effect that those documents did not bear the signature of the petitioner, as opined by the handwriting expert. According to the petitioner there cannot be any doubt that production of those documents are most essential for just decision of the case and as such, the order of the learned Magistrate has certainly caused failure of justice and so it should be immediately set aside.

4. Learned Advocate for the added opposite party/accused also supported the contention, as made out in the revisional application and as placed by the learned Advocate for the petitioner at the time of hearing.

5. Learned Advocate for the opposite party /complainant submits that there was a direction of this High Court to complete the trial of the case within February, 2007 and the learned Magistrate was trying his best to conclude the trial within that period. He further

submits that the prayer, as made by the accused persons before the learned Magistrate was not at all justified, as the documents, which were sought to be called for, were not material for the purpose of the disposal of the case, as filed u/s 138 of the NI Act. According to him, this revisional application has been preferred only to delay the hearing of the case and as such, same should be rejected.

6. I have taken into consideration the submissions made by the learned Advocates for all the sides. Admittedly a case u/s 138 of the NI Act was filed at the instance of the opposite party complainant against the accused persons. It was alleged therein that the accused persons issued three cheques in discharge of their liability and those cheques were dishonored and in spite of demand they failed to make the payment and so they are liable to be punished as per provisions of Section 138 of the NI Act. On the other hand, it appears that the accused persons have set up a claim to the effect that there was no transaction at all in between the parties and as such, question of payment by issuing cheques in discharge of any liability does not arise at all. According to the learned Advocate for the petitioner and the added opposite party, as per provisions of NI Act onus lies upon the accused persons to rebut the presumption which may arise in favour of the complainant and in order to discharge that onus it is very much essential for the accused persons to produce those bills and challans in view of the claim, as made by them before the Court. As such, for the purpose of establishing the defence case, the accused persons filed a petition u/s 91 of the Criminal Procedure Code praying before the Learned Magistrate for issuing summons against the complainant to produce those documents. But the learned Magistrate, by his impugned order was pleased to reject the said petition. According to the learned Advocate for the complainant and the added opposite party, the order, as passed by the learned Magistrate is absolutely illegal. I have perused the order dated 22.01.2007, as passed by the learned Magistrate. It appears that the learned Magistrate simply observed. "The petition is considered and rejected". The Ld. Advocates for the petitioner cited several decisions to show that this order, as passed by the learned Magistrate is absolutely illegal. There cannot be any doubt that the order, as passed by the learned Magistrate is not at all proper. It is the settled position that whenever a petition has been filed before the Court then it is incumbent upon the said Court either to allow or to reject the prayer by way of assigning sufficient reason. But it appears that no reason whatsoever has been given by the learned Magistrate while rejecting the said prayer. As such, there cannot be any doubt that the order dated 22.01.2007 is not at all proper. But at the same time, it appears from the certified copy of the orders of the learned Magistrate that even after the said rejection order the accused persons participated in the trial and the PW1 was cross-examined in full. Thereafter the PW2 and PW3 were examined and cross-examined on different dates and at that time the accused persons did not think it necessary to challenge the order dated 22.01.2007. It further appears from the order dated 07.02.2007 that the accused persons were examined u/s 313 Cr.P.C. and the next date was fixed for production of the defence witnesses. So it necessarily means that the trial of the case is almost at the verge of conclusion. In my opinion, no purpose will be served in setting aside the order dated 22.01.2007 and to

send back the matter for the court below for reconsideration of the prayer has made by the accused persons for production of documents by the complainant. It will further delay the proceedings. At the same time, I have already pointed out that the learned Magistrate fixed a date for examination of the defence witnesses and think that there is ample scope for the accused persons to take appropriate steps for production of those documents by way of issuing summons upon the complainant after obtaining permission from the Court. Whether the complainant will produce those documents or not that is a separate thing and can be taken into consideration by the Court at the time of writing of the judgment It cannot be said at this stage that as the prayer of the accused persons for production of documents by the complainant at the time of examination-in-chief was rejected, so the accused persons have been deprived of establishing their defence case. After all onus lies upon the accused persons to establish its case and if necessary the accused persons are at liberty to pray before the learned Magistrate for passing appropriate order upon the complainant for production of those alleged documents.

7. Considering all these things, I am of opinion, that no prejudice has been caused to the accused persons by the impugned order, as alleged and as such, I think that the prayer, as made in this revisional application for setting aside the order dated 22.01.2007 should not be allowed at this stage when the trial is almost complete.

8. In the result, the revisional application is dismissed on contest. The learned Magistrate is directed to take immediate step for disposal of the case as expeditiously as possible without allowing any unnecessary adjournment. If however, any prayer is made on behalf of the defence for directing the complainant to produce some documents then the learned Magistrate is directed to consider such prayer in accordance with law and to pass a reasoned order after giving opportunities of hearing to both the sides.

9. Send a copy of this judgment to the Court below at once for information and necessary action.

10. Xerox certified copy of this order be handed over to the parties, if applied for, on urgent basis.