courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 09/11/2025

(2008) 07 CAL CK 0053

Calcutta High Court

Case No: CRR No. 1142 of 2008

Bijay Kumar Bhattar	APPELLANT
Vs	
Trimurti Associates Pvt. Ltd. and Another	RESPONDENT

Date of Decision: July 11, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 397(1), 397(2), 397(3), 401
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2008) 4 CHN 585 : (2009) 5 RCR(Criminal) 255

Hon'ble Judges: Arunabha Basu, J

Bench: Single Bench

Advocate: Kushal Paul and Anima Gour, for the Appellant;Amit Bhattacherjee and Ayan Bhattacherjee for Opposite Party No. 1, for the Respondent

Judgement

Arunabha Basu, J.
The revisional application u/s 401 read with Section 482 of the Code of Criminal Procedure is directed against the judgement and order dated 29.1.2008 passed by learned Chief Judge, City Sessions Court, Calcutta In connection with Criminal Revision No. 111 of 2007, whereby and whereunder the learned Sessions Judge affirmed the order dated 30.3.2007 passed by learned Metropolitan Magistrate, 11th Court, Calcutta.

2. A complaint case bearing No. C/313 of 1996 u/s 138 of the Negotiable Instruments Act is pending before the Court of learned Metropolitan Magistrate.

3. Petitioner is arrayed as accused in connection with the said case.

4. It appears that initially the opposite party No. 1, which is the company, was represented by one Pawan Kumar Agarwal but an application was filed before the learned Metropolitan Magistrate on 21.11.2006 whereby a prayer for substitution was made. It was stated that one Vinay Kumar Gupta may be permitted to substitute the said

Pawan Kumar Agarwal.

5. Learned Metropolitan Magistrate initially passed certain directions but ultimately by order dated 30.3.2007 permitted the said Vinay Kumar Gupta to represent the complainant-company as its authorised agent in place of Pawan Kumar Agarwal.

6. The learned Metropolitan Magistrate took into consideration the plea on behalf of the company that the said Pawan Kumar Agarwal has already left the company and as such the company is not in a position to cause his appearance. Learned Metropolitan Magistrate took into consideration that the complainant being a company, is a juristic person and as the erstwhile authorised representative of the company namely Pawan Kumar Agarwal has left the company, the learned Metropolitan Magistrate accepted the prayer of complainant-company and directed such substitution.

7. The order was challenged before the learned Sessions Judge in connection with Criminal Revision No. 111 of 2007. Learned Sessions Judge took into consideration the rival contention of respective parties and relying on the decision of the Supreme Court in M.M.T.C. Ltd and Anr. v. Medchl Chemicals & Pharma (P) Ltd. and Anr. reported in 2002 C Cr. LR (SC) 249 and other decisions of this Court refused to interfere with the order passed by the learned Metropolitan Magistrate.

8. Learned Advocate for the petitioner during the course of his submission, pointed out that Pawan Kumar Agarwal, in his capacity as authorised representative of the complainant-company, was already examined in part and as such the learned Court below committed an illegality in permitting such substitution at the stage of evidence.

9. Learned Advocate appearing for the private opposite party submitted that the opposite party has already filed an application for vacating the interim order which is registered as CRAN No. 1739 of 2008.1 have proposed to decide the revisional application along with the application filed by the opposite party.

10. Learned Advocate for the opposite party while supporting the order passed by the learned Sessions Judge submitted that the petitioner, who is arrayed as accused cannot insist that a company must represent by a particular person, who shall be the authorised representative of the company. It is a matter between the company and the said person and as such the petitioner in his capacity as an accused cannot have any say over the matter. This decision is illustrated in Supreme Court in M.M.T.C. Ltd. and Anr. (supra) took into consideration the earlier decision of the Supreme Court in Associated Cement Co. Ltd. Vs. Keshvanand, . In this case the Supreme Court held as follows :

The complainant has to be a corporeal person who is capable of making a physical appearance in the Court. It has been held that if a complaint is made in the name of a incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the Court. It is held that the Court looks upon the natural person to be the complainant for all practical purposes. It is held that when the

complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complaint to represent the former in Court proceedings. It has further been held that no Magistrate shall insist that the particular person whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the Court for sending any other person to represent the company in the Court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground.

11. In this view of the matter the petitioner cannot have any grievance about such substitution particularly when learned Court below accepted the contention of the complainant-company that its erstwhile authorised representative has already left the company and he is required to be substituted by another authorised representative. If that application was rejected by the learned Magistrate then it would have caused great prejudice to the complainant in order to pursue their case as because the person who has already left the company, cannot remain their authorised representative.

12. It has to be borne in mind that the authorised representative represents the company till he has relation with the company or he is accepted to be an authorised representative by such company.

13. When the company has no control over the authorised representative as because the said person has already left the company then it will be unjust to insist that the complainant-company must pursue with the said case with the erstwhile authorised representative.

14. In my view the Supreme Court decision in M.M.T.C. Ltd. and Anr. (supra) will be squarely applicable in the facts situation of this case, particularly when the defence cannot be said to have been prejudiced by such change/substitution of authorised representative. In other words unless the prayer is granted then a peculiar position will arise where the complainant- company will be compelled to proceed with the case being represented by an authorised representative, who is neither authorised by the company any more as he has left the company nor can be a representative of the company because after his departure he may not have any interest in the affairs of the company, including pursuing the case now pending before the Court of learned Metropolitan Magistrate. In this view of the matter the main grievance of the petitioner against the order of the learned Sessions Judge and the learned Metropolitan Magistrate may not be accepted and must be refused.

15. Learned Advocate appearing for the opposite party, however, submitted that the present revisional application is not maintainable mainly in view of the fact that the

petitioner herein has filed a second revisional application after his initial revisional application filed before the Sessions Judge was dismissed. Such filing of the second revisional application cannot be permitted in view of specific bar as prescribed u/s 397 of the Code of Criminal Procedure.

16. Sub-section (3) to Section 397 of the Code of Criminal Procedure stipulates that if an application under this Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. There cannot be any dispute to the legal proposition that second revisional application by the same person will not be maintainable.

17. The Code of Criminal Procedure prescribes concurrent jurisdiction so far as the revisional power is concerned, either with the Court of Sessions or with the High Court. Law has given the choice to the party to approach either the Court of Sessions or the High Court in connection with revisional application. But once the choice is taken by the party to move the Court of Sessions and if the revisional application is decided finally against him then he cannot file a second revisional application before the High Court.

18. It is also pertinent to point out that the power of this Court u/s 482 cannot be exercised against a specific legal provision under the Code of Criminal Procedure.

19. Learned Advocate for the petitioner submitted that the petitioner is mainly aggrieved by the order of the learned Magistrate passed on 30.3.2007 where the learned Magistrate directed that evidence adduced by Pawan Kumar Agarwal be expunged. The relevant portion of the order runs as follows:

Evidence adduced by P. Agarwal is hereby expunged.

20. In the revisional application, at ground No. 2, it has been averred that learned Magistrate committed a serious mistake in expunging the evidence, which is already on record. It appears that further cross-examination of said Pawan Kumar Agarwal was pending when such substitution was effected by the complainant company mainly on the ground that the Pawan Kumar Agarwal has left the company.

21. Learned Advocate for the petitioner referred to three-Judges Bench decision of Supreme Court in Krishnan and another Vs. Krishnaveni and another, .

21. At para 10 of the aforesaid decision, Hon"ble Supreme Court held as follows:

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant cannot be allowed to take recourse to the revision to the High Court u/s 397(1) or under inherent powers of the High Court u/s 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power u/s 401 and continuous supervisory jurisdiction u/s 483 of the Code. So, when the High Court on examination of

the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power u/s 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when expeditious trial is conducted.

23. It may be pointed out in this context that the power of the High Court u/s 482 of the Code of Criminal Procedure, is normally exercised when the High Court finds it necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The power of High Court should be exercised when the High Court finds that serious illegality has been committed by the learned Court below while dealing with a judicial matter oven at the same is not the subject-matter of the revision.

24. The present revision is mainly directed against the order passed by the learned Sessions Judge and there is nothing to show in the order passed by the learned Sessions Judge that this aspect of the matter was at all taken up before the said Court. But while dealing with an application u/s 482 of the Code of Criminal Procedure, the High Court cannot be unmindful of the actual state of affairs and cannot adopt a hyper technical approach while dealing with the matter. If during the course of hearing, it is brought to the notice of this Court about the serious illegality committed by the Court below, then in all fairness of the matter the High Court is required to exercise its inherent jurisdiction to rectify the illegality.

25. There is no provision either in the Evidence Act or in the Code of Criminal Procedure under which direction to expunge evidence can at all be passed by the learned Court below. Evidence adduced on record has to be taken into consideration irrespective of its value.

26. In this case as because there is substitution of authorised representative and as because the earlier authorised representative was examined in part (as the examination of the said witness is not complete) then the learned Court below cannot direct expunction of the said evidence which is already on record. The value of such evidence has to be decided at the time of conclusion of trial. Change of authorised representative

by the complainant company cannot be a ground to expunge the evidence which is already on record particularly when the law does not permit such expunction of evidence. In my view the portion of the order under which the learned Magistrate directed that the evidence of Pawan Kumar Agarwal stands expunged, must be set aside and quashed and the same is set aside accordingly.

27. With this direction and observation, the revisional application is disposed of.

28. There shall be no order as to costs.

29. As the case is pending since 1996, learned Court below shall proceed as expeditiously as possible and conclude the trial within a period of six months from the date of receipt/communication of the order.

30. I make myself absolutely clear that I have not entered into any discussion either about the merit of the complaint case or about the value of evidence, which is already on record. Learned Court below shall decide the matter independently without being influenced by any of the observation as recorded in the body of the order.

31. No separate order is required to be passed in the application filed by the opposite party being CRAN 1739/2008 and the same stands disposed of along with this revisional application.

32. Criminal Section is directed to forward a copy of the order to learned Court below immediately.

33. Criminal Section is also directed to supply urgent certified copy of the order to the parties as and when applied for.