Single Bench

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

CR.M.P. NO. 478 /2007

PETITIONER

Satish Agrawal, aged about 40 years, son of Shri Bajrang Lal Agrawal, aged about 42 years, Proprietor – Prateek Sales Associates, Light Industrial Area, Near Kothari Damar Factory, Hathkhoj, Bhilai, Distt. Durg (C.G.)

4750/07

Filed on 11.10.07
by Shri Om P. Sethy Advocate
R. to D.R. (J)

VERSUS

RESPONDENT

M/s. Rameshwaram Steel and Power Private Limited, through – Director, Radheshyam Agrawal, Office – 215, Deshbandhu Complex, Aamanaka, Raipur (C.G.) through – General Power of Attorney Holder – Sashank Sesh, son of Saradchad Sesh, Chief Accountant, r/o. Ramkund Raipur (C.G.)

OATH COMMISSIONER APARNA MALVIYA CG-2073/08 Bilaspur Chhattisgarh

PETITION UNDER SECTION 482 OF THE CRIMINAL PROCEDURE CODE, 1973

HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB: Hon'ble Mr. T.P.SHARMA, J.)

M.Cr.C.No.478 of 2007

Satish Agrawal

Vs.

M/s. Rameshwaram Steel and Power Provate Limited and another

ORDER BE POSTED FOR PRONOUNCEMENT ON 31/8/2009

Sd/-
T. P. Sharma
Judge

AFR

(SB)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C.No.478 of 2007

Petitioner — Satish Agrawal, aged about 40 years, son of Shri Bajrang Lal Agrawal, aged about 42 years, Proprietor-Prateek Sales Associates, Light Industrial Area, Near Kothari Damar Factory, Hathkhoj, Bhilai, Distt.Durg (C.G.)

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(Petition under Section 482 of the Code of Criminal Procedure, 1973)

(SB: Hon'ble Mr. T.P. Sharma, J.)

Present:

Shri T.K.Tiwari, counsel for the petitioner.

Shri B.P.Sharma with Shri Vivek Chopra, counsel for the respondent.

Order

(Delivered on 31st August, 2009)

1. The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') for quashment of order taking cognizance dated 22.8.2006 passed by the Judicial Magistrate First Class, Raipur, in Misc. Criminal Case No.1262/06 against the petitioner. Same has been challenged before the 8th Additional Sessions Judge (FTC), Raipur, in Criminal Revision No.11/07. Learned 8th Additional Sessions Judge has dismissed the revision only on the ground that order impugned is interlocutory order and revision is barred under Section 397(2) of the Code.

2. Quashment is prayed on the ground that without there being any allegation of service of notice of demand upon the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act, 1881'), the trial Court has registered the complaint and has taken cognizance and has issued process against the petitioner and same has been confirmed in revision. Both the Courts below have committed illegality and continue of proceeding on the basis of such complaint would be abuse of process of the Court.

3. I have heard learned counsel for the parties and perused the order impugned and other documents filed on behalf of the petitioner.

4. Learned counsel for the petitioner vehemently argued that in case of complaint for the offence punishable under Sections 138 of the Act, 1881, the complainant is required to make sufficient allegation required under Section 138 of the Act, 1881, but the present complainant has only alleged that notice of demand dated 27.5.2006 has been issued to the petitioner but has not alleged in his complaint that when notice was served upon the petitioner. Learned counsel further argued that in the absence of such allegation, complaint in present form is not maintainable and proceeding on the basis of such complaint would be abuse of process of the Court.

5. Learned counsel placed reliance in the matter of **Sanjay Bhandari etc. v. Sate of Rajasthan**[1] in which the High Court of Rajasthan has held that order taking cognizance is not interlocutory but final order and revision against such order is maintainable. Learned counsel further placed reliance in the matter of **Rajeev Kumar v. State of U.P. & Ors.**[2] in which the High Court of Allahabad has held that order taking cognizance can be challenged in criminal revision or under Section 482 of the Code. Learned counsel also placed reliance in the matter of **Madhu Limaye v. State of Maharashtra**[3] in which the Apex Court has held that powers under Section 482 of the Coe may be exercised considering the following 3 restrictions namely,

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[1] 2009 Cri.L.J.2291
[2] 2009 Cri.L.J.142
[3] AIR 1978 SC 47

(25)

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

6. On the other hand, learned counsel for the respondent supported the order impugned and argued that allegation made in the complaint is sufficient to constitute the offence punishable under Section 138 of the Act, 1881. In paras-8, 9 and 11, the respondent has made specific allegation that notice has been issued and has been served upon the petitioner, but he has not made the payment, therefore, he has filed complaint.

7. This is a petition under Section 482 of the Code for quashment of criminal complaint pending before the Court of Judicial Magistrate First Class, Raipur. Power under Section 482 of the Code is exceptional in nature and should be used sparingly. While dealing with exercise of power under Section 482 of the Code in the matter of **M/s. Zandu Pharmaceutical Works Ltd. and others v. Md. Sharaful Haque and others**[4] the Apex Court has held thus,

> "8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or

[4] AIR 2005 SC 9

criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

8. While dealing with the question of necessity of making specific allegation in case of complaint under Section 138 of the Act, 1881, the Apex Court in the matter of **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and another**[5] has held that the complainant is required to make necessary allegation that at the time of commission of the offence the accused was in charge of, and responsible for the conduct of business of the company.

9. While dealing with the same question, the Apex Court in the matter of **Sabitha Ramamurthy & Anr. v. R.B.S. Channabasavardhya**[6] has held that the complainant is required to make averment in the complaint that all Directors of the Company were responsible for clearance of the liability.

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005 SCC (Cri) 1975
006 (4) Crimes 67 (SC)

10. This is a petition under Section 482 of the Code and even the order not revisiable in terms of Section 397(2) of the Code can be quashed in exercise of inherent jurisdiction.

11. The complainant has made specific allegations in paras-8, 9 and 11 which read as under:-

> "8. यह कि, उक्त के पश्चात परिवादी ने दिनांक 27/05/2006 को पंजीकृत डाक से अभियुक्त को मांग सूचना पत्र प्रेषित करते हुये सूचित किया कि उक्त दोनों चेक अभियुक्त के खाते में पर्याप्त राशि न होने की वजह से अनादरित हो गये है, अतः उक्त चेकों में वर्णित सम्पूर्ण राशि का भुगतान अभियुक्त तत्काल कर दे।
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> 9. यह कि, परिवादी द्वारा प्रेषित पंजीकृत सूचना पत्र की प्राप्ति के बाद भी अभियुक्त द्वारा परिवादी को अनादरित चेकों की कुल रकम 32,36,172/- रूपये अक्षरी बत्तीस लाख छत्तीस हजार एक सौ बहत्तर रूपये का भुगतान निर्धारित समयावधि में नही किया गया।
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> 11. यह कि, परिवाद का कारण दिनांक 25/05/2006 को उत्पन्न हुआ, जब अभियुक्त द्वारा प्रदत्त उक्त दोनों चेकों का भुगतान अनादरण की वजह से परिवादी को प्राप्त नहीं हुआ तथा पंजीकृत मांग सूचना प्रेषित करने के बाद भी अभियुक्त द्वारा चेकों की रकम का भुगतान परिवादी को न किये जाने के कारण निरंतर जारी है, अतः परिवाद समयावधि के अंतर्गत प्रस्तुत होने से माननीय न्यायालय के क्षेत्राधिकार व श्रवणाधिकार के अंतर्गत हैं।

12. Para-9 specifically reveals that after receiving notice by the petitioner, he has failed to pay the amount of cheques, therefore, the complainant/respondent has filed complaint before the Court within prescribed time. The allegation made in the complaint satisfies the requirement of Sections 138 & 142 of the Act, 1881. Even otherwise this is a question of fact to be decided on the basis of evidence.

13. The trial Court has taken cognizance on the basis of complaint supported by an affidavit of the complainant in terms of Section 145 of the Act, 1881. While taking cognizance against the petitioner, learned Judicial Magistrate First Class has not committed any illegality. I do not find any merit in this petition.

14. Consequently, the petition being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
T. P. Sharma
Judge

B/-