

Criminal Revision
Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 727 of 2010

Judgment On: 07-04-2010.

Adityalal Mukherjee
versus
Abir Kumar Dutta & Anr

POINTS:

COST, FRIVOLOUS APPLICATION: Petitioner prayed for adjournment on the ground of pendency in revision before the High Court where further proceeding have been stayed-Trial Court directed to file certified copy of the order-Petitioner moved High Court against the order-Whether liable to be rejected with cost- Negotiable Instruments Act, S.138-Code of Criminal Procedure, 1973 S. 313/482

FACTS:

The petitioner has been facing his prosecution under Section 138 of the Negotiable Instruments Act, before the Learned Metropolitan Magistrate. On a date fixed for examination of the accused under Section 313 of the Code of Criminal Procedure, a prayer for adjournment was made on behalf of the accused/petitioner on the ground a criminal revision before the High Court is pending and all further proceedings have been stayed. The Learned Magistrate adjourned the matter directing the accused/petitioner to produce the certified copy of the order in support of his claim that proceeding has been stayed. Being aggrieved by such order the accused/petitioner moved a Criminal Revision

HELD:

This is a fit case where exemplary cost should be imposed against this petitioner for moving this type of frivolous application before this Court.

Para-7

The Court does not find any merit in this application and, this application accordingly stands dismissed and it is directed that the Learned Court shall proceed to examine the accused under Section 313 of the Code of Criminal Procedure at once and positively fix for a date for such examination of the accused within seven days from the date of receipt of the communication of this order. Para-8

It is further directed if pursuant to the liberty granted to the petitioner no application has been filed before the Trial Court then in that case the Trial Court shall proceed to examine the accused/petitioner personally under Section 313 of the Code of Criminal Procedure. If on the date fixed for such examination of the accused, the accused persons are found absent in the Court then in that case the Learned Magistrate shall exhaust all coercive measures available under the Code of Criminal Procedure to ensure their appearance in the Court for their examination under Section 313 of the Code. Para-9

CASE CITED:

Keya Mukherjee Vs. Magma Leasing Ltd., 2008 (3) SCC (Cri) 537.

For Petitioner : Mr. Shiv Shankar Banerjee
 Mr. Atarul Haque Mollah

THE COURT:

1. The present petitioner has been facing his prosecution under Section 138 of the Negotiable Instruments Act, in connection with the Complaint Case No. C-3179 of 2001 before the Learned Metropolitan Magistrate, 11th Court, Calcutta. On 11.08.2009 a date

fixed for examination of the accused under Section 313 of the Code of Criminal Procedure, a prayer for adjournment was made on behalf of the accused/petitioner on the ground a criminal revision before the High Court is pending and all further proceedings have been stayed. When the Learned Magistrate adjourned the matter till 29th of August, 2009 directing the accused/petitioner to produce the certified copy of the order in support of his claim that proceeding has been stayed.

2. Being aggrieved by such order the accused/petitioner moved a Criminal Revision No. 139 of 2009 before the Learned Chief Judge, City Sessions Court, Calcutta. The said criminal revision was allowed by the Sessions Court with the following orders;

“that the crl. Revn. 139/09 be and the same is allowed on consent in part. The impugned order dated 11.8.09 is hereby modified to the extent that the accused shall bring the stay order from the Hon’ble Court and produce the same before the Id. M.M. within six weeks from this date, failing which, the Id. M.M. will be at liberty to examine the accused persons u/s 313 Cr.P.C. Id. Magistrate is directed to dispose of the case by the end of March, 2010 in case the accused fails to produce any stay order before him. Both parties are directed to appear before the Id. Court below on 26.2.10.”

The petitioner in this criminal revision challenged the said order passed in connection with the aforesaid criminal revision.

3. The learned lawyer appearing on behalf of the petitioner could not at his best efforts able to highlight as to how the accused/petitioners aggrieved by such order. The learned advocate could not also able to enlighten this Court as to whether in connection with any criminal revision pending before this High Court there is any subsisting stay order as regards to the complaint case in question. He also fails to apprise this Court whether copy of any stay order has been produced before the Learned Court below or not although the time granted by the revisional Court has been expired.

4. Be that as it may, it may be noted that in connection with the self-same case, i.e., Complaint Case No. 3179 of 2001, pending before the Learned Metropolitan Magistrate, 11th Court, Calcutta, the present petitioner earlier moved this Court a Criminal Revision being C.R.R. No. 1669 of 2008 and that application was disposed of on 16th of September, 2009. By the said order, this Court granted liberty to the petitioner to file fresh application within four weeks, under Section 313 (1)(b) of the Code of Criminal Procedure before the Learned Court below and it was further directed if such application is filed, the Learned Court below shall consider the same in accordance with law as laid down by the Hon'ble Supreme Court in the case of Keya Mukherjee Vs. Magma Leasing Ltd., reported in 2008 (3) SCC (Cri) 537.

5. However, Mr. Banerjee has again expressed his inability to inform this Court whether such application has been filed or not.

6. Thus, it appears the accused/petitioner is bent upon to drag the aforesaid complaint case relating to an offence punishable under Section 138 of the Negotiable Instruments Act instituted in the year 2001 and by moving this Court one after another stalled its conclusion.

7. In my opinion, this is a fit case where exemplary cost should be imposed against this petitioner for moving this type of frivolous application before this Court.

8. Be that as it may, I do not find any merit in this application and, this application accordingly stands dismissed and it is directed that the Learned Court shall proceed to examine the accused under Section 313 of the Code of Criminal Procedure at once and positively fix for a date for such examination of the accused within seven days from the date of receipt of the communication of this order.

9. It is further directed if pursuant to the liberty granted to the petitioner in connection with C.R.R. No. 1669 of 2008, if no application has been filed before the Trial Court then in that case the Trial Court shall proceed to examine the accused/petitioner personally under Section 313 of the Code of Criminal Procedure. I further make it clear if on the date fixed for such examination of the accused, the accused persons are found absent in the Court then in that case the Learned Magistrate shall exhaust all coercive measures available under the Code of Criminal Procedure to ensure their appearance in the Court for their examination under Section 313 of the Code. Keeping in mind the aforesaid complaint case relating to the offence punishable under Section 138 of the Negotiable Instruments Act was instituted on a complaint filed in Court in the year 2001 the Learned Magistrate is directed to continue with the pending proceedings from day to day until its conclusion and no adjournment must be granted unless the Court finds that such adjournment is necessary for ends of justice.

10. The Office is directed to communicate this order to the Learned Court below at once.

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

(Ashim Kumar Roy, J.)