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Maskoor Hashmi (ser)

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF SEPTEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.3157 OF 2020

BETWEEN:

MS. SHALLY M. PETER
AGED ABOUT 40 YEARS,
PROPRIETRIX, S.P. IMPACKS,
50, SETHNA POWER TOWN,
HORAMAVU AGARA MAIN ROAD,
KALYAN NAGAR POST,
BENGALURU – 560 043.

... PETITIONER

(BY SMT. SHAHIDA KHANAM J., ADV., ALONG WITH
SRI MASKOOR HASHMI MD.)

AND:

M/S. BANYAN PROJECTS INDIA PVT. LTD.
NO.770, 12TH MAIN, 100 FEET ROAD,
INDIRANAGAR, BENGALURU – 560 038,
REPRESENTED BY ITS MANAGING DIRECTOR,
MR. SURESH HEMDEV.

... RESPONDENT

(BY SRI S.R. SREEPRASAD, ADV.)

* * *

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ORDER DATED 25-2-2020 IN C.C. NO.57252 OF 2018 PASSED BY THE XXXIV ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU, VIDE ANNEXURE-F, AND ETC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 8-9-2021 AND COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT PORONOUNCED THE FOLLOWING:

HIGH COURT OF KARNATAKA BENGALURU

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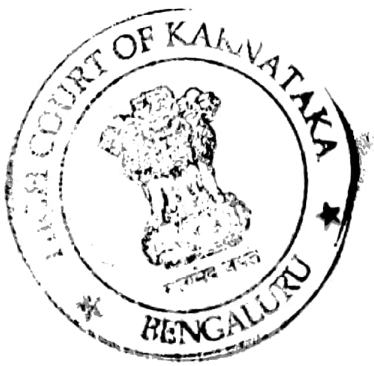
ORDER

This petition is filed by the petitioner-complainant under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for quashing the order dated 25-2-2020 passed by the XXXIV Additional Chief Metropolitan Magistrate, Bengaluru, in C.C. No.57252 of 2018.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The case of the petitioner is that, he filed a case against the respondent-accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. After entering the appearance, the petitioner and the respondent have filed joint memo for compromise for settling the dispute for Rs.33.00 lakh on terms, which is as under:

> *"A. Rs.2,00,000/- on 19-02-2019 via Cheque Bearing No.002297 drawn on Kotak Mahindra Bank bearing Account No.0812158814.*



B. *Rs.2,00,000/- on 19-03-2019 via Cheque Bearing No.002298 drawn on Kotak Mahindra Bank bearing Account No.0812158814.*

C. *Rs.2,00,000/- on 23-04-2019 via Cheque Bearing No.002299 drawn on Kotak Mahindra Bank bearing Account No.0812158814.*

D. *Rs.2,00,000/- on 28-05-2019 via Cheque Bearing No.002300 drawn on Kotak Mahindra Bank bearing Account No.0812158814.*

E. *Rs.6,25,000/- on 18-06-2019 via Cheque Bearing No.003494 drawn on Kotak Mahindra Bank bearing Account No.0812158814.*

F. *Rs.6,25,000/- on 23-07-2019 via Cheque Bearing No.003495 drawn on Kotak Mahindra Bank bearing Account No.0812158814.*

G. *Rs.6,25,000/- on 27-08-2019 via Cheque Bearing No.003496 drawn on Kotak Mahindra Bank bearing Account No.0812158814.*

H. *Rs.6,25,000/- on 24-09-2019 via Cheque Bearing No.003497 drawn on Kotak Mahindra Bank bearing Account No.0812158814."*

4. It is further case of the petitioner that, the respondent agreed to pay the amount as mentioned above and to pay the interest at the rate of 2.5% per month until realisation of the said amount. Condition No.6 of the joint memo for compromise says that if the cheque is not honoured, then the petitioner is at liberty to take legal action against the respondent and the petitioner is reserved all the rights and liberties to reopen the case for the purpose of recovery of amount. The Trial Court closed the case on the terms of the compromise.

5. It is further case of the petitioner that, he presented the cheques given by the respondent before the Court and all

eight cheques were dishonoured for 'funds insufficient'. Therefore, the petitioner filed a memo to reopen the case and also filed a memo of calculation and prayed for recovery of amount of Rs.33.00 lakh with interest at the rate of 2.5%, which came to be dismissed by the Magistrate and the same is under challenge before this Court.

6. Learned counsel for the petitioner has contended that though the matter was ended up in compromise, but the respondent has failed to make the payment as agreed in terms of the compromise and the Trial Court has dismissed the memo of calculation, which is not correct. Hence, he prayed for quashing the order and to permit him to reopen the case against the respondent.

7. *Per contra*, the learned counsel for the respondent has objected the petition and contended that once the case is ended up in compromise either in the Court or in the *Lok Adalat*, the only option available to the petitioner is to file a case for recovery. He cannot seek for reopening of the criminal case which is already closed by the Magistrate. Even

otherwise, the respondent has already paid the entire amount to the petitioner and same was referred by the Magistrate in his order and contended that the petition is not maintainable under Section 482 of the Cr.P.C. as the petitioner is required to file Criminal Revision Petition under Section 397 of the Cr.P.C. before the Sessions Judge. Therefore, without exhausting the remedy before the Sessions Judge filing the petition under Section 482 of the Cr.P.C. before this Court is not maintainable. Hence, he prayed for dismissal of the petition.

8. Upon hearing the arguments and perusal of the record, the points that arise for my consideration are:

i. *Whether the petition filed under Section 482 of the Cr.P.C. is maintainable without exhausting the remedy under Section 397 of the Cr.P.C. before the Sessions Judge?*

ii. *Whether there is any provision available to the petitioner to file execution petition for recovery of amount in terms of the compromise?*

9. Learned counsel for the petitioner has vehemently contended that criminal petition under Section 482 of the Cr.P.C. is alternative remedy available to the petitioner to approach the High Court and there is no bar for approaching under Section 482 of the Cr.P.C. which is inherent power even without exhausting the remedy under Section 397 of the Cr.P.C. before the Sessions Judge. In this regard, the learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of ***DHARIWAL TOBACO PRODUCTS LTD v. STATE OF MAHARASTRA*** reported in ***LAWS (SC) 2008 12 72***, at paragraph Nos.10 and 14, it has held as under:

> *"10. Inherent power of the High Court is not conferred by statute but has merely been saved thereunder. It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of.*
>
> *(See Krishnan and another v. Krishnaveni and another, AIR 1997 SC 987).*

In fact in Adalat Prasad v. Rooplal Jindal and others, [(2004) (7) SCC 338)] to which reference has been made by the learned Single Judge of the Bombay High Court in V.K. Jain and others (supra) this Court has clearly opined that when a process is issued, the provisions of Section 482 of the Code can be resorted to.

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14. *It is interesting to note that the Bombay High Court itself has taken a different view. In a decision rendered by the Aurangabad Bench of the Bombay High Court, a learned Single Judge in Vishwanath Ramkrishna Patil (supra), where a similar question was raised, opined as under:*

> *It is difficult to curtail this remedy merely because there is a revisional remedy available. The alternate remedy is no bar to invoke power under Article 227. What is required as to see the facts and circumstances of the case while entertaining such petition*

under Article 227 of the Constitution and/or under Section 482 of Criminal Procedure Code. The view therefore, as taken in both the cases V.K. Jain and Saket Gore, no way expressed total bar. If no case is made out by the petitioner or the party to invoke the inherent power as contemplated under Section 482 of Criminal Procedure Code and/or the discretionary or the supervisory power under Article 227 of the Constitution of India they may approach to the revisional Court, against the order of issuance of process.

11. *Taking into consideration the facts and circumstances of those cases, the learned Judge has observed in V.K. Jain and Saket Gore (supra) that it would be appropriate for the parties to file revision application against the order of issuance of process. There is nothing*

mentioned and/or even observed that there is total bar to file petition under Section 482 of Criminal Procedure Code and/or petition under Article 227 of the Constitution of India.

12. *The Apex Court's decision already referred above, nowhere prohibited or expressly barred to invoke Section 482 of Criminal Procedure Code or Article 227 of the Constitution of India against the order of issuance of process.*

In Keki Bomi Dadiseth (supra), another learned Single Judge of the Nagpur Bench of the Bombay High Court entertained an application under Section 482 of the Code, where summons have been served for commission of offence under the Prevention of Food Adulteration Act, 1954, holding:

33. In view of the ratio laid down by the Apex Court in the above referred cases, it is well settled that inherent power under Section

> *482 can be invoked by the accused in the appropriate case irrespective of other factors and this Court can exercise the same in a deserving case within parametres of law and, therefore, the contentions canvassed by the learned Additional Public Prosecutor in this regard are misconceived and same are rejected."*

The Hon'ble Supreme Court in the above said case has categorically held that there is no bar for approaching the High Court either under Section 482 of the Cr.P.C., or under Article 227 of the Constitution of India.

10. In another case, the Hon'ble Supreme Court in the case of ***PRABHU CHAWLA v. STATE OF RAJASTHAN AND ANOTHER*** reported in ***(2016) 16 SCC 30*** has taken similar view that availability of alternative remedy under Section 397 of the Cr.P.C. by itself cannot be a ground to dismiss the petition under Section 482 of the Cr.P.C. In view of the

above judgment, the contention raised by the learned counsel for the respondent that the petition is not maintainable under Section 482 of the Cr.P.C. without exhausting the remedy under Section 397 of the Cr.P.C. cannot be sustained. Therefore, it has to be rejected.

11. Learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of ***GIRISH KUMAR SUNEJA v. C.B.I.*** in ***Criminal Appeal No.1137 of 2017*** decided on ***13-7-2017*** wherein, it has held that discretionary jurisdiction under Section 397(2) of the Cr.P.C. is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 of the Cr.P.C. is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Cr.P.C. or to prevent abuse of the process of any Court. Therefore, the judgment relied upon is not applicable to the facts and circumstances of the case on hand. Accordingly, I answer point No.1 in favour of the petitioner-complaint.

12. The petitioner and the respondent entered into compromise by filing joint memo for compromise and the case was closed. The petitioner filed application to reopen the case and to proceed against the respondent as there was violation of terms and conditions of the settlement. Of course, on perusal of the joint memo for compromise, liberty was granted to the petitioner to reopen the case for the purpose of recovery of amount with interest at the rate of 2.5%. Admittedly, the case was ended up in compromise and the same was closed. The respondent had issued eight cheques on different dates from 19-2-2019 and 24-9-2019, i.e. one cheque each month and it is not in dispute that all those eight cheques were dishonoured due to 'funds insufficient'. Once the cheques are dishonoured, it is clear that there was violation of the terms and conditions of the joint memo. Therefore, the petitioner is required to take action against the respondent for recovery of Rs.33.00 lakh with interest at the rate of 2.5% as agreed by the parties and liberty was also reserved for recovery of the said amount. However, the learned counsel for the respondent contended that once the

matter is disposed of in terms of the compromise and the petitioner shall recover the amount by filing execution petition. On the other hand, the learned counsel for the petitioner submits that the case should be recalled and reopen.

13. Learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of ***K.N. GOVINDAN KUTTY MENON v. C.D. SHAJI*** reported in ***(2012) 2 SCC 51***, wherein it is held that compromise between the parties resulted in decree of civil Court and the award passed by the *Lok Adalat* is executable decree. Further, the Co-ordinate Bench of this Court in the case of ***K.R. VENUGOPAL v. R. MADHUSUDHAN*** reported in ***LAWS(KAR) 2016 9 141*** has held that once the matter is ended up in compromise, the same Court can proceed against the accused for execution of its order.

14. Looking to the case of the petitioner, the respondent undertook to pay the amount and issued eight cheques for Rs.33.00 lakh and based upon the joint memo for

compromise, case was closed. Once the case is closed, it amounts to decree or award in *Lok Adalat*. Therefore, once the amount has not been paid by the accused in terms of the compromise, then the petitioner is required to approach the same Court for recovery of amount in accordance with law and it need not reopen the case, which was already closed by the Court and Magistrate does not have power to recall the said order in view of the bar as per the provisions of Section 362 of the Cr.P.C. Therefore, only option available to the petitioner is to file execution case before the same Judge for execution of the order in terms of the compromise for recovery of amount mentioned in the cheques, but the Trial Court, without application of mind, has stated that the amount has already been paid by the respondent to the petitioner without having knowledge that those cheques were already dishonoured and thereby, the respondent has violated the terms of compromise. Therefore, the Court ought to have registered a criminal miscellaneous case against the petitioner for the purpose of recovery of amount as fine from the accused either under Section 431 of the Cr.P.C. or under

Section 421 of the Cr.P.C., but has wrongly rejected the prayer in the name of memo of calculation, which requires to be set aside. Hence, I pass the following

ORDER

Criminal petition is ***allowed***. The order dated 25-2-2020 passed by the XXXIV Additional Chief Metropolitan Magistrate, Bengaluru, in C.C. No.57252 of 2018 is hereby set aside. Application of the petitioner-complainant shall be treated as miscellaneous case and to proceed to issue warrant as per Section 421 of the Cr.P.C. and to recover the same as fine as per Section 431 of the Cr.P.C.

HIGH COURT OF KARNATAKA BENGALURU

Sd/-
JUDGE

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a) The date on which the application wa made 21-9-21
b) The date on which charges and additional Charges if [illegible] called for 24-9-21
c) The dated on which charges and additional Charges if [illegible] deposited/Paid 24-9-21
d) The date [illegible] is ready 25-9-21
e) The date [illegible] 25-9-21
For delivery [illegible] it is required
f) The date [illegible] to appear [illegible] 29-9-21
g) The date on which the copy is delivered to the Applicant
h) Examined by 27/9/2021

TRUE COPY
25/9/21
Section Officer
High Court of Karnataka
Bengaluru - 560 001