

“NON-REPORTABLE”

IN THE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

WRIT PETITION (CRL) NO.31 OF 2012

Karuna Singh

.... Petitioner

Versus

State of NCT of Delhi & Anr.

.... Respondents

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. Respondent no.2 Mrs. Veena Solanki got FIR No.13 of 2004 registered at Police Station Lodhi Colony on 13.4.2004. Therein she made allegations against the petitioner Ms.Karuna Singh and five others. On 16.4.2007, i.e., more than three years after the registration of the aforesaid FIR, a charge-sheet was filed against the petitioner (and five others), under Sections 420, 468 and 471 read with Section 120B of the Indian Penal Code. Though a period of more than five years has elapsed after the filing of the charge-sheet, we are informed, that charges are yet to be framed by the Additional Chief Metropolitan Magistrate (South) Saket, New Delhi.

2. Soon after the registration of the FIR referred to in the foregoing paragraph, the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 on 24.9.2004. The aforesaid complaint

was made against respondent no.2, Mrs.Veena Solanki. Along with her complaint, the petitioner claims to have filed her evidence by way of a personal affidavit. Thereafter on 25.9.2006, the Magistrate (Negotiable Instruments Act) trying the complaint, allowed respondent no.2 to cross-examine the petitioner. Even after five years, the cross-examination which commenced in 2006 is stated to be continuing. It is submitted, that the cross-examination of the petitioner, at the behest of the respondent no.2, is mainly with reference to FIR No.13 of 2004 registered on 13.4.2004. This, according to the petitioner amounts to a gross abuse of law by respondent no.2, and as such, violates the fundamental rights of the petitioner vested in him under Articles 20(3) and 21 of the Constitution of India. In this behalf, it is the contention of the learned counsel for the petitioner, that the provisions of Negotiable Instruments Act, 1881 contemplate a speedy and swift trial. Referring to the proceedings initiated by the petitioner under Section 138 of the Negotiable Instruments Act it is submitted, that the cross-examination of the petitioner at the hands of respondent no.2 has lasted for more than five years. Denial of a speedy and expeditious trial constitutes an act of harassment of the petitioner, and as such the violation of the petitioner's fundamental rights.

3. At the very inception, we expressed our views about the maintainability of the instant writ petition under Article 32 of the Constitution of India. We, therefore, called upon the learned counsel for the petitioner to assist us as to whether, it is desirable to entertain a

petition like the one in hand, directly before the highest court of the land. In so far as the instant controversy is concerned, it would also be relevant to notice, that in order to facilitate respondent no.2 to cross-examine the petitioner, the Magistrate (Negotiable Instruments Act) trying the complaint filed by the petitioner, vide an order dated 9.9.2009 summoned the charge-sheet filed in Case FIR No.13 of 2004. The petitioner Ms.Karuna Singh, assailed the aforesaid order dated 9.9.2004 in the High Court at Delhi by filing Criminal Misc. Case No.3668 of 2009. It is the submission of the learned counsel for the petitioner, that the trial court despite the pendency of Criminal M.C. No.3668 of 2009, allowed respondent no.2 to cross-examine the petitioner, even with reference to the charge-sheet in case FIR No.13 of 2004 (and other documents connected therewith). In so far as the instant aspect of the matter is concerned, it was the case of the petitioner, that the High Court had failed to take any final decision in the matter. It was also submitted at the behest of the petitioner that the Magistrate (Negotiable Instruments Act) trying the complaint of the petitioner, had unfairly allowed the petitioner to be cross-examined with reference to the said charge-sheet in Case FIR No.13 of 2004. A submission was also advanced at the behest of the petitioner, that the Magistrate (Negotiable Instruments Act) had failed to control the cross-examination of the petitioner (at the hands of the respondent no.2). In this behalf, it was pointed out that during the process of cross-examination of the petitioner, the petitioner had invited the attention of the Magistrate

(Negotiable Instruments Act) to a decision rendered by the Delhi High Court in *Rajesh Aggarwal vs. State and another etc.*, 2010 VII AD (Delhi) 576. Despite the aforesaid, the Magistrate (Negotiable Instruments Act), while permitting respondent no.2 to cross-examine the petitioner on 2.5.2011, had imposed costs of Rs.20,000/- for wasting court time by making such an intervention. It was also pointed out, that the order dated 2.5.2011 was assailed by the petitioner by filing a writ petition in the High Court at Delhi. It was submitted, that the aforesaid writ petition is pending, wherein the High Court has stayed the operation of the order dated 2.5.2011 in respect of payment of costs imposed on the petitioner. It was submitted, that the High Court has however failed to grant any injunction, staying further cross-examination of the petitioner before the Magistrate (Negotiable Instruments Act).

4. In the facts and circumstances narrated hereinabove, in order to respond to the query made by this Court on the issue of maintainability (of the instant writ petition under Article 32 of the Constitution of India), learned counsel for the petitioner placed reliance on *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar* AIR 1969 SC 556, *Dr.Smt.Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) & Ors.* AIR 1987 SC 2186 and *Ram and Shyam Company vs. State of Haryana & Ors.* (1985) 3 SCC 267, and on the basis thereof contended, that the rule which required the exhaustion of alternative remedies, before the concerned High Court or the

Supreme Court of India could be approached under their inherent writ jurisdiction, was a rule of convenience and discretion. It was in the nature of a self-imposed restraint of the court, rather than a binding rule of law. It was submitted, that the availability of an alternative remedy could not oust the jurisdiction of a High Court under Article 226 of the Constitution of India, and of this Court under Article 32 of the Constitution of India. It was also submitted, that in cases where the order complained of was illegal or invalid and contrary to law, a petition at the instance of an affected party could be entertained by the jurisdictional High Court or by this Court, and the availability of an alternative remedy would not prevent a High Court or this Court from entertaining a petition, specially in cases where extraordinary relief was prayed for. It was also the case of the petitioner, that in situations where the alternative remedy would not provide an effective relief, the High Court and this Court, as a rule, ought to provide relief to the concerned party. In the facts and circumstances of this case, it is submitted, that this Court should issue appropriate directions to the Magistrate (Negotiable Instruments Act) so as to require him to effectively control the petitioner's cross-examination (at the hands of the respondent no.2), as the petitioner's fundamental rights are being violated.

5. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the petitioner, as also, the judgments relied upon by him. We are astonished at the submissions advanced at the hands of the learned counsel for the petitioner. The

petitioner herein is seeking directions to the concerned Magistrate, as a matter of first instance at the hands of this Court. The submissions advanced at the hands of the learned counsel for the petitioner by themselves concede, that there is an alternative remedy available to the petitioner, yet he has chosen to come to the highest court of the land, under Article 32 of the Constitution of India. Even though the order passed by the Magistrate (Negotiable Instruments Act) dated 9.9.2009 has been assailed by the petitioner before the High Court at Delhi under Sections 482 and 483 of the Code of Criminal Procedure by filing Criminal M.C. No.3668 of 2009, and the said proceedings are still pending, the petitioner has chosen to approach this Court. While doing so, the petitioner has even cast aspersions on the High Court, by pleading and contending that the High Court had, till date, not taken a final decision in the matter. It would also be relevant to mention, that besides filing Criminal M.C. No.3668 of 2009, the petitioner has also filed a writ petition under Article 226 of the Constitution of India in the High Court at Delhi, wherein she had assailed the order passed by the Magistrate (Negotiable Instruments Act) dated 2.5.2011. In the aforesaid writ petition, the petitioner has admittedly sought directions to the Magistrate (Negotiable Instruments Act) to control the petitioner's cross-examination (at the hands of the respondent no.2). The aforesaid writ petition is still pending consideration before the High Court. The High Court has stayed the payment of costs imposed on the petitioner. The grievance of the petitioner is, that the High Court had failed

to stay the further cross-examination of the petitioner, with reference to the charge-sheet filed in Case FIR No.13 of 2004. Surprisingly, when the prayers made by the petitioner before this Court, are pending adjudication before the High Court at Delhi, the petitioner has approached this Court under Article 32 of the Constitution of India, without assailing any order passed by the High Court. This, in our considered view, amounts to gross misuse of the jurisdiction of this Court. Such a behaviour at the hands of the petitioner cannot be countenanced. The effort of the petitioner seems to be, to browbeat either respondent no.2, or the Magistrate (Negotiable Instruments Act), so that the proceedings progress as per the desire of the petitioner. In her aforesaid effort, the petitioner has also cast aspersions against the High Court.

6. This is not a case where despite availability of an alternative remedy, the petitioner has approached this Court under its writ jurisdiction. This is a case where the petitioner has availed of her alternative remedies, and simultaneously on the same cause of action, she has approached the highest court of the land under Article 32 of the Constitution of India. This constitutes a gross abuse of the process of law. We are satisfied that an efficacious alternative remedy is available to a party which has initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881. In the present case the petitioner has approached the High Court at Delhi under Sections 482 and 483 of the Code of Criminal Procedure, and through a separate petition under Articles 226/227 of the Constitution of

India. Both petitions are still pending before the High Court. It is not possible for us to accept that the fundamental rights of the petitioner under Articles 20(3) and 21 of the Constitution of India have been violated in any manner whatsoever, so as to enable him to approach this court, in the manner suggested. If the instant plea of the petitioner is accepted, the jurisdiction of this Court under Article 32 of the Constitution of India will become available against every action of a Magistrate, not only under the Negotiable Instruments Act, but also, in respect of criminal proceedings conducted under other statutory provisions.

7. To the benefit of the petitioner, it also needs to be noticed, that reliance was placed on behalf of the petitioner on M/s.Mandvi Co-op. Bank Ltd. vs. Nimesh B. Thakore AIR 2010 SC 1402. The instant reliance was placed on the basis of the merits of the controversy i.e., in support of the merits of the petitioner's cause. Having gone through the judgment relied upon by the learned counsel for the petitioner, we find that the same is wholly inapplicable to this case. In Mandvi Coop. Bank's case (supra) the accused on being summoned under Section 145(2) of the Negotiable Instruments Act, raised the plea, that inspite of the complainant having filed his evidence by way of an affidavit under Section 145(1), the complainant must be orally examined in chief all over again, before the accused is summoned or called upon to cross-examine the complainant. This Court while disposing of the aforesaid controversy interpreted Section 145(2) of the Negotiable Instruments Act to conclude, that a person who

had preferred his evidence on affidavit, need not make an oral deposition in court, before the accused is summoned or is required to cross-examine him. This is not the issue in the present controversy. We are therefore satisfied, that the reliance placed by the learned counsel for the petitioner on Mandvi Coop. Bank's case (supra) is wholly misconceived.

8. In view of the above, we are of the view, that the petitioner has grossly abused the jurisdiction of this Court by approaching this Court under Article 32 of the Constitution of India. The instant writ petition being devoid of any merit is hereby dismissed. For the abuse of the process of this Court, the petitioner is directed to deposit costs quantified at Rs.20,000/- with the Supreme Court Legal Services Authority, within four weeks from the date of pronouncement of the instant order, failing which the matter be placed before the Court for appropriate direction for recovery of the costs.

.....J.

(Dr. B.S. Chauhan)

.....J.

(Jagdish Singh Khehar)

New Delhi;
April 10, 2012.

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Case No. : Writ Petition (Crl.) No. 31 of 2012

Date of Decision : 10.04.2012

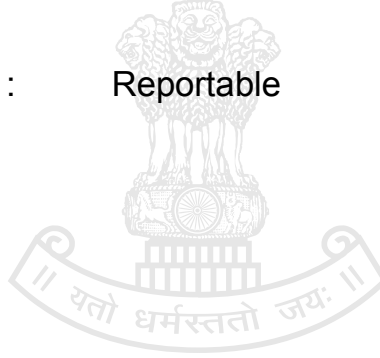
C.A.V. on : 19.03.2012

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Coram : Hon'ble Dr. Justice B.S. Chauhan
Hon'ble Mr. Justice Jagdish Singh Khehar

Judgment delivered by : Hon'ble Mr. Justice Jagdish Singh Khehar
(Read by Hon'ble Dr. Justice B.S.
Chauhan)

Nature of Judgment : Reportable



JUDGMENT