

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.991 OF 2023

BETWEEN

VUPPALAPATI SATISH KUMAR
S/O V. V. RAMA RAO
AGED ABOUT 47 YEARS
DIRECTOR,
M/S PRITHVI INFORMATION SOLUTIONS LTD
R/O PLOT NO.1235, ROAD NO.60
JUBILEE HILLS
HYDERABAD

... PETITIONER

(BY SRI SANDESH J. CHOUTA, SENIOR COUNSEL
FOR SRI KRISHMA NEDUNGADI, ADVOCATE)

AND

VTH SOURCE COMPONENTS PVT. LTD.
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT 1956
HAVING THEIR OFFICE AT NO.67
GOVINDAPPA ROAD
BASAVANAGUDI
BANGALORE-560004

REPRESENTED BY ITS
AUTHORISED REPRESENTATIVE
MR.HEMANTH KUMAR V..... RESPONDENT

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO a) QUASH THE JUDGMENT DATED
02.01.2023 (ANNEXURE-A) PASSED BY THE XXVII
ADDL.C.M.M., BENGALURU IN C.C.NO.22746/2017

CONVICTINGE PETITIONER/ ACCUSED NO.2 HEREIN, FOR THE OFFENCES PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 6.02.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDERS ON MAINTAINABILITY

This petition is filed by the petitioner-accused No.2 under Section 482 OF Cr.P.C for setting aside the judgment of conviction and sentence passed by the 27th Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.22746/2017 dated 2.1.2023 for having convicted petitioner for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred as 'NI Act')

2. The office raised the objection regarding maintainability of this petition filed under section 482 of Cr.P.C., as the petitioner being the accused convicted in the trial court, requires to file appeal under section 374 of Cr.P.C.

3. Heard, Sri. Sandesh J. Chouta, learned senior Counsel for petitioner.

4. The learned senior counsel has contended that the criminal petition filed under section 482 of Cr.P.C is maintainable, even though the statutory right of the accused for filing appeal is available, therefore filing this petition is maintainable. Hence, prayed for over ruling the office objections.

5. The learned counsel relied upon the judgments of Hon'ble Supreme Court in the case of Punjab State Warehousing Corporation Faridkot Vs Shree Durga Ji Traders and Ors reported in (2011) 14 SCC 615 and in case of Vijay and another Vs State of Maharashtra and Anr reported in (2017) 13 SCC 317.

6. Having heard the arguments and perused the records, it is an admitted fact that the accused was a convicted accused by the trial court for the offence punishable under Section 138 of NI Act. The contention of

the learned senior counsel is that while convicting the accused No.2, who is only Managing Director of the company but the trial court acquitted the accused No.1 who is the Company. Therefore, there is an error committed by the trial court in acquitting the Company from the charges and convicting only the Managing Director, which is against the principles laid down by the Hon'ble Supreme Court in various cases. Therefore, this petition is maintainable under section 482 of Cr.P.C.

7. The learned senior counsel relied upon the judgment of Hon'ble Supreme Court in Punjab State Warehousing Corporation Faridkot Vs Shree Durga Ji Traders and Ors reported in (2011) 14 SCC 615 where Hon'ble Supreme Court has held that even the alternative remedy of filing appeal is available, but there is no absolute bar to entertain the petition under section 482 of Cr.P.C. I have verified the judgment of Hon'ble Supreme Court in the said cases, where the private complaint filed by the complainant came to be dismissed for default which

falls under section 256 of Cr.P.C. On perusal of the provisions of the section 256 of Cr.P.C which defines that closing the proceedings amounts to an acquittal. Therefore, an appeal can also be filed under section 378(4) of Cr.P.C which is a statutory right and the parties can also invoke the provisions of section 482 of Cr.P.C. This court in various cases entertained section 482 of Cr.P.C., where the complaint was dismissed for non prosecution or default of not taking steps, even though an alternative statutory remedy is available, the High Court can also exercise the power under section 482 of Cr.P.C as both remedies are before the High Court and not before the Sessions Court.

8. Another case reported in case of Vijay and another Vs State of Maharashtra reported in (2017) 13 SCC 317, the Hon'ble Supreme Court has held that section 397 of Cr.P.C., is attracted against all the orders except the interlocutory orders, even mere availability of alternative remedy cannot be a ground to dis-

entitlement of relief under section 482 of Cr.P.C. The law laid down by the Hon'ble Supreme Court in respect of quashing the FIR for the IPC offences or any other offences, this Court can entertain the petitions filed under Section 482 of Cr.P.C for quashing the petitions and FIR. Therefore, this ruling is not applicable to the case on hand, as this petition is filed for setting aside the judgment of conviction and sentence passed by the trial court, even in the case of Punjab State case stated supra, there is an alternative remedy available in respect of 378 of Cr.P.C. This court entertaining 482 of Cr.P.C, where there is no evidence led by the parties and there is no final judgment of conviction or acquittal after the trial in those cases. Therefore, the High Court can entertain Section 482 of Cr.P.C, if the complaint is dismissed for non-prosecution or dismissed for default under section 256 of Cr.P.C.

9. Whereas, the present case on hand, the petitioner is challenging the conviction and sentence passed by the trial court by exercising the power under

section 255 of Cr.P.C. Therefore, the petitioner is required to file appeal under section 374 (2) of Cr.P.C before the Sessions Judge, where the first appellate court required to re-appreciate evidence on record and pass the final judgment and thereafter the aggrieved parties can approach high court under section 397 of Cr.P.C, if any concurrent finding of both the Court below. Here in this Court, this Court cannot re-appreciate the evidence on record, both on facts and law, which is required to be dealt with, by the appellate court in the appeal under Section 374 of Cr.P.C. This Court cannot re-appreciate any evidence on record and give findings, it is only extraordinary power for quashing the proceedings, since the first appeal is nothing but continuation of original proceedings in appellate court.

If this petition filed under section 482 of Cr.P.C, is entertained, the respondent will be deprived of right of appeal before the appellate court and thereafter parties can approach the High Court.

It appears the accused are following these back door tactics in order to avoid the interim compensation going to be imposed by the first appellate court under section 148 of NI Act. Therefore, I am of the view the petition filed under section 482 of Cr.P.C is not maintainable. The office objection is sustained.

Hence, the petition is dismissed as not maintainable.

Liberty is granted to the petitioner to file appeal before the appropriate forum. The office to return the documents to the learned counsel for the petitioner.

Registry is directed to follow this order while raising objections.

Sd/-
JUDGE

AKV