

## **CRR-570-2016**

*(LAKHMICHAND JAIN Vs SMT. MUNNI BAI AGRAWAL)*

**06-12-2016**

Shri Rajeev Sharma, learned counsel for the petitioner.

Shri S.K. Shrivastava, learned counsel for the respondent.

Today, according to the cause-list the case is listed for order on I.A No.5177/2016 filed for stay of the proceedings of trial Court, I.A No.6876/2016 by the respondent for vacating the stay order and I.A No.6877/2016 filed by the respondent for dismissal of the revision petition.

With consent of present counsel for the parties, they were heard finally at the motion stage.

The revision petition under Section 397 and 401 of the Cr.P.C has been filed by the petitioner/original accused against an order passed on 05.05.2016 by JMFC, Kurba (Abhilasha N. Mawar) District Vidisha in Criminal Case No.44/2016 by which substance of accusation under Section 138 of the Negotiable Instruments Act were stated to the accused/present petitioner and his plea was recorded in relation to above-mentioned offence.

It has been contended by present counsel for the petitioner that when the present petitioner appeared before the above-mentioned Court on 05.05.2016 and filed bail bonds for his appearance, thereafter substance of accusation for the offence punishable under Section 138 of the Negotiable Instruments Act were stated by the Magistrate to him and his plea was recorded, though on the same date (05.05.2016) an application was filed by him as accused that the present petitioner be permitted to cross-examine the complainant and her witnesses and also be permitted to produce his defence witness.

Copies of the private complaint filed by present respondent in

the above-mentioned Court and copy of the application filed by the accused on 05.05.2016 have also been annexed with the revision petition.

The above-mentioned prayer has been strongly opposed by the respondent/original complainant on the ground that the trial Court as provided under Section 251 of the Cr.P.C, which is related to trial of summons cases by Magistrate, after appearance of the accused substance of accusation (particulars of the offence) shall be stated to accused and his plea shall be recorded and under summons case trial, there is no provision for giving opportunities of cross-examine of the complainant and his witnesses and for producing defence evidence before stating the substance of accusation to the accused.

Present petitioner has also filed the certified copy of the order-sheet recorded by the trial Court on 05.05.2016. In this order-sheet, it has also been mentioned that after stating the substance of the accusation and recording the plea of the accused, an application was filed by the accused and that application has been allowed by the trial Court on the same day and the case was fixed for cross-examination of complainant's witnesses in the future on 27.06.2016.

In the application filed by the present petitioner before the trial Court on 05.05.2016, it is also mentioned that after stating the substance of the accusation, the application was being filed. It is significant to mention here that the above-mentioned application has been allowed by the trial Court.

In the case of **Subramaniam Sethuraman Vs. State of Maharashtra and another** reported in **(2004) 13 SCC 324**, it has been held by the Hon'ble Apex Court in para No.16 and 17 of its judgment as follows:-

"**16.** The next challenge of the learned

counsel for the appellant made to the finding of the High Court that once a plea is recorded in a summons case it is not open to the accused person to seek a discharge, cannot also be accepted. The case involving a summons case is covered by Chapter XX of the Code which does not contemplate a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore, in our opinion the High Court was correct in coming to the conclusion that once the plea of the accused is recorded under Section 252 of the Code the procedure contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion.

**17.** As observed by us in Adalat Prasad's case the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under Section 482 of the Code and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case."

It appears that the grievance of the petitioner is that before stating the substance of accusation, he should have been given opportunity to cross-examine the complainant and his witnesses and should have been allowed to produce defence evidence. It appears from the certified copy of the above-mentioned order-sheet that summons case trial has been adopted by the trial Court and under summons case trial, before stating the substance of accusation, cross-examination of the complainant and his witnesses is not necessary. It

appears that the present petitioner as accused was wishing that the procedure which is adopted in warrant case trial, instituted on private complaint, should have been followed in the present case, which was not permissible under Chapter Twentieth. The trial Court has not committed any illegality and irregularity in stating the substance of accusation of the above-mentioned offence to the present petitioner and in recording his plea to the above-mentioned offence. The revision petition is devoid of merits.

In the result, the revision petition filed by the petitioner is hereby **dismissed**. A copy of this order be immediately sent to the above-mentioned trial Court.

**ASHOK KUMAR JOSHI)**  
**JUDGE**

*Amjad*