

## **Anil Khadkiwala vs The State Govt. Of Nct Of Delhi on 30 July, 2019**

**Equivalent citations: AIR 2019 SUPREME COURT 3583, AIRONLINE 2019 SC 719, 2020 (1) ADR 335, (2019) 109 ALLCRIC 606, (2019) 10 SCALE 126, (2019) 203 ALLINDCAS 184, (2019) 2 ALD(CRL) 613, (2019) 2 ORISSA LR 966, (2019) 2 UC 1335, (2019) 3 ALLCRILR 721, (2019) 3 ALLCRIR 2803, (2019) 3 BANKCAS 487, (2019) 3 CIVILCOURTC 684, (2019) 3 PUN LR 594, (2019) 3 RECCRIR 971, (2019) 75 OCR 955, 2019 ACD 894 (SC), AIR 2019 SC( CRI) 1288**

**Author: Navin Sinha**

**Bench: Navin Sinha, Ashok Bhushan**

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s).1157 OF 2019  
(arising out of SLP(Crl.) No. 2663 of 2017)

ANIL KHADKIWALA

...APPELLANT(S)

VERSUS

STATE (GOVERNMENT OF NCT OF DELHI)  
AND ANOTHER

...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The application preferred by the appellant under Section 482, Cr.P.C. to quash the summons issued in complaint case no.3403/1/2015 was dismissed by the High Court opining that since the earlier Crl.M.C. No.877 of 2005 for the same relief had already been dismissed, the second application was not maintainable.

Respondent no.2 filed a complaint under Section 142 read with Section 138 of the Negotiable Instruments Act (hereinafter referred to as “the Act”) against the appellant who was the Director of M/s. ETI Projects Ltd., the Company in question. It was alleged that the accused person had issued cheques dated 15.02.2001 and 28.02.2001, which were dishonoured upon presentation. The

appellant had preferred Crl.M.P. No.1459 of 2005 for quashing the same. He took the defence, without any proof that he had already resigned from the Company on 20.12.2000 and which was accepted by the Board of Directors on 20.01.2001. The application was dismissed on 18.09.2007 after noticing the plea of resignation, solely on the ground that the cheques were issued under the signature of the appellant.

3. The appellant then preferred a fresh application under Section 482 giving rise to the present proceedings. The High Court noticing the reliance on Form 32 issued by the Registrar of Companies, under the Companies Act, 1956, in proof of resignation by the appellant prior to the issuance of the cheques, issued notice, leading to the impugned order of dismissal subsequently.

4. Learned counsel for the appellant submitted that there was no bar to the maintainability of a second application under Section 482, Cr.P.C. in the peculiar facts and circumstances of the case, relying on Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and Ors., AIR 1975 SC 1002.

5. Learned counsel for respondent no.2 relied upon order dated 06.05.2019 of this Court in Atul Shukla vs. The State of Madhya Pradesh and another (Criminal Appeal No.837 of 2019) to contend that such an application was not maintainable. The cheques being post-dated, the appellant cannot escape its answerability.

6. We have considered the respective submissions on behalf of the parties and are of the opinion that the appeal deserves to be allowed for the reasons enumerated hereinafter.

7. The complaint filed by respondent no.2 alleges issuance of the cheques by the appellant as Director on 15.02.2001 and 28.02.2001. The appellant in his reply dated 31.08.2001, to the statutory notice, had denied answerability in view of his resignation on 20.01.2001. This fact does not find mention in the complaint. There is no allegation in the complaint that the cheques were post-dated. Even otherwise, the appellant had taken a specific objection in his earlier application under Section 482, Cr.P.C. that he had resigned from the Company on 20.01.2001 and which had been accepted. From the tenor of the order of the High Court on the earlier occasion it does not appear that Form 32 issued by the Registrar of Companies was brought on record in support of the resignation. The High Court dismissed the quashing application without considering the contention of the appellant that he had resigned from the post of the Director of the Company prior to the issuance of the cheques and the effect thereof in the facts and circumstances of the case. The High Court in the fresh application under Section 482, Cr.P.C. initially was therefore satisfied to issue notice in the matter after noticing the Form 32 certificate. Naturally there was a difference between the earlier application and the subsequent one, inasmuch as the statutory Form 32 did not fall for consideration by the Court earlier. The factum of resignation is not in dispute between the parties. The subsequent application, strictly speaking, therefore cannot be said to a repeat application squarely on the same facts and circumstances.

8. In Mohan Singh (supra), it was held that a successive application under Section 482, Cr.P.C. under changed circumstances was maintainable and the dismissal of the earlier application was no

bar to the same, observing:

“2. .... Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561A of the CrPC to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos. 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years.....”

9. In Harshendra Kumar D. vs. Rebatilata Koley Etc., 2011 CrL.L.J. 1626, this Court held:

“22. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to Appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the Appellant has resigned much before the cheques were issued by the Company. As noticed above, the Appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the Appellant had resigned from the post of Director of the Company. The acceptance of Appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about Appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the Appellant. These facts leave no manner of

doubt that on the date the offence was committed by the Company, the Appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the Appellant, it would result in gross injustice to the Appellant and tantamount to an abuse of process of the court.”

10. Atul Shukla (supra) is clearly distinguishable on its facts as the relief sought was for review/recall/modify the earlier order of dismissal in the interest of justice. Consequently, the earlier order of dismissal was recalled. It was in that circumstance, it was held that in view of Section 362, Cr.P.C. the earlier order passed dismissing the quashing application could not have been recalled. The case is completely distinguishable on its own facts.

11. The Company, of which the appellant was a Director, is a party respondent in the complaint. The interests of the complainant are therefore adequately protected. In the entirety of the facts and circumstances of the case, we are unable to hold that the second application for quashing of the complaint was not maintainable merely because of the dismissal of the earlier application.

12. The impugned order of the High Court is set aside. The appeal is allowed and the proceedings against the appellant alone are quashed.

.....J. (Ashok Bhushan) .....J. (Navin Sinha) New Delhi, July 30, 2019.