IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. /2023
(arising out of SLP (Crl.) No. 894/2022)

BIJOY SHANKAR MISHRA ..... APPELLANT(S)

VERSUS

THE STATE OF JHARKHAND & ANR. ..... RESPONDENT(S)

O R D E R

Leave granted.

The facts of the case are rather peculiar. On 20.02.2016, the appellant – Bijoy Shankar Mishra had filed a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881[1] in respect of dishonored cheques amounting to Rs.45,20,000/- (Rupees Forty Five Lakh Twenty Thousand Only) in the court of Chief Judicial Magistrate at Jamshedpur, Jharkhand. The court of the Judicial Magistrate, First Class, took cognizance, and issued summons to the accused, respondent no.2 – Sourav Ghosh, *vide* order dated 22.03.2016. The appellant – Bijoy Shankar Mishra recorded prosecution evidence. On 15.01.2018, the statement of the respondent no.2 – Sourav Ghosh was recorded under Section 313 of the Code of Criminal Procedure, 1973.[2] Defence evidence was also

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Reason:

1 **For short, "the Act".**
2 **For short, "the Code".**

led.

When the case was fixed for final arguments, the court of Judicial Magistrate, First Class, on examining the records, came to the conclusion that the court did not have territorial jurisdiction in terms of Section 142(2)(a) of the Act. No opportunity was granted to the appellant – Bijoy Shankar Mishra to take remedial steps by moving an application under Section 407 of the Code before the High Court. In haste and hurry, order dated 18.02.2020 was passed*, inter-alia,* on the ground that the cheques in question were presented in the account of the appellant – Bijoy Shankar Mishra at Adityapur, district Saraikela-Kharsawan and, therefore, only the courts at Saraikela-Kharsawan possessed territorial jurisdiction to try the case. Respondent no. 2 – Sourav Ghosh was discharged, notwithstanding the fact that this was a summons case.

Thereafter, appellant – Bijoy Shankar Mishra had preferred a petition under Section 482 of the Code before the High Court, registered as Cr. M.P. No. 1266/2020. The appellant – Bijoy Shankar Mishra had relied upon Sections 460, 462 and 465 of the Code. The High Court *vide* impugned judgment/order dated 07.12.2021, dismissed the petition and has sustained the order of the Judicial Magistrate, First Class, dated 18.02.2020.

Heard the learned counsel for the parties at some length.

We are of the opinion that this is a fit case to exercise our power under Article 142 of the Constitution of India read with Section 406 of the Code. We are passing this order since we feel that the Judicial Magistrate, First Class, has passed the order without realizing the legal consequences as well as the fact that

the trial had remained pending for more than four years and had proceeded without any objection to territorial jurisdiction, till the stage of final arguments. There was a lapse and proper legal guidance, which was not provided to the appellant – Bijoy Shankar Mishra. We feel that the appellant – Bijoy Shankar Mishra should not suffer on account of lack of proper legal assistance. Procedural defect/lapse, had a remedy, and was not substantial as to constitute lack of subject-matter jurisdiction.

The Code is procedural in nature and technical defects and irregularities should not come in the way of substantial justice.

Our reasoning gets support from the recent judgment of this Court dated 21.02.2023 in *"Yogesh Upadhyay and Another vs. Atlanta Limited"*[3], wherein this Court exercised its power to transfer cases and appeals under Section 406 of the Code.[4]

In these circumstances, we set aside the order passed by the Judicial Magistrate, First Class, dated 18.02.2020, as well as the impugned order/judgment passed dated 07.12.2021 dismissing Cr. M.P. No.1266/2020, and exercise our power under Article 142 of the Constitution of India read with Section 406 of the Code and direct that the trial in the criminal complaint filed by the appellant - Bijoy Shankar Mishra will continue in the court of the Judicial Magistrate, First Class, at Jamshedpur, Jharkhand.

The appeal is allowed in the above terms.

We clarify that this order has been passed in view of the

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3 **2023 SCC Online SC 170.**

4 **In view of the order being passed, we need not examine whether Sections 460, 462, and 465 of the Code could have been invoked before the High Court, notwithstanding the order passed by the Judicial Magistrate, First Class, dated 18.02.2020, discharging the Respondent no. 2 – Sourav Ghosh on lack of territorial jurisdiction. This question is left open.**

peculiar facts and circumstances of the case and will not be treated as a precedent.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(S.V.N. BHATTI)

NEW DELHI;
SEPTEMBER 12, 2023.

ITEM NO.20 COURT NO.3 SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 894/2022

(Arising out of impugned final judgment and order dated 07-12-2021 in CRMP No. 1266/2020 passed by the High Court of Jharkhand at Ranchi)

BIJOY SHANKAR MISHRA Petitioner(s)

VERSUS

THE STATE OF JHARKHAND & ANR. Respondent(s)

(IA No. 15263/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 73854/2022 - EXEMPTION FROM FILING O.T.)

Date : 12-09-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. Rahul Shyam Bhandari, AOR
Mrs. G Priyadharshni, Adv.
Mr. Satyam Pathak, Adv.
Dr. Ratneshwar Chakma, Adv.
Mr. Konark Tyagi, Adv.

For Respondent(s) Mr. Kumar Anurag Singh, Adv.
Mr. Anando Mukherjee, AOR
Ms. Ekta Bharati, Adv.

Ms. Anindita Mitra, AOR
Ms. Rashmi Nandakumar, Adv.
Ms. Rachita Bhat, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY) (R.S. NARAYANAN)
COURT MASTER (SH) ASSISTANT REGISTRAR
(Signed order is placed on the file)