

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL
CRIL.PETN. No. 43 of 2022**

Kajal Sengupta, son of Shri Sunil Ranjan Sengupta, aged about 69 years,
resident of 87, Lenin Sarani Road, Dharmatala, Taltala, Kolkata – 700 013.

....Petitioner

- Versus -

Sri Suresh Kumar Jain alias Suresh Jain, son of Nirmal Kumar Jain, Manager
of North East Marketing Company, Imphal Branch of Thangal Bazar, Police
Station – City, Imphal West, District – Manipur.

...Respondent

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR**
23.01.2023

By way of this petition filed under Section 482 Cr.P.C, the accused in
Cril.(N.I.) Case No. 27 of 2019 on the file of the learned Chief Judicial Magistrate,
Imphal West, a complaint case filed under Sections 138, 141 & 142 of the
Negotiable Instruments Act, 1881 (for brevity, 'the Act of 1881'), assails the
orders dated 06.06.2019 and 06.05.2022 passed therein and prays for quashing
of the entire proceedings in the complaint case.

By the order dated 06.06.2019, the learned Chief Judicial Magistrate
opined that the necessary ingredients required under Sections 138 & 142 of the
Act of 1881 were made out and took cognizance of the offence under Section
138 of the Act of 1881. By the later order dated 06.05.2022, the learned Chief
Judicial Magistrate recorded the statement of the complainant under Section
200 Cr.P.C and issued summons to the accused, the petitioner herein.

Upon hearing Mr. Pran Bora, learned senior counsel, appearing for
the petitioner, on 21.09.2022, this Court ordered notice to the respondent
returnable on 02.11.2022. Further, taking note of case law on the subject, this
Court stayed further proceedings in the complaint case. On 05.12.2022, this

Court noted that, despite service of notice, the respondent had not chosen to enter appearance and adjourned the matter to give him an opportunity to appear before this Court. The earlier interim order was extended till the next date of hearing, viz., 23.01.2023.

Today, yet again, there is no representation for the respondent. The matter is accordingly taken up for hearing on merits.

Mr. Pran Bora, learned senior counsel, would urge three grounds in support of his argument that the subject complaint case on the file of the learned Chief Judicial Magistrate, Imphal West, deserves to be quashed. Firstly, he would point out that the complainant therein stated that he was the Manager of a proprietorship concern, named North East Marketing Company, and that the proprietor thereof was one A. Yanger Jamir. However, he did not file any authorization given by the said proprietor, whereby he could have filed the complaint case before the Court. The second ground urged by the learned senior counsel is that though his client was shown as the accused therein by name, the cause-title itself indicated that he was arrayed as an accused in the capacity of being a Director of Senbo Engineering Limited, a corporate body. Learned senior counsel would assert that the complaint case could not have been filed without making the said company a party and that it deserved to be rejected at the threshold on that ground. The third and last ground raised by the learned senior counsel is that there was no specific averment in the body of the complaint that the accused was in charge of and was responsible for the conduct of business of the company.

He would place reliance on case law to support these grounds.

In **Aneeta Hada Vs. Godfather Travels & Tours Private Limited [(2012) 5 SCC 661]**, a 3-Judges Bench of the Supreme Court held that, if the commission of the offence under Sections 138 & 141 of the Act of 1881 is attributed to a company, then for maintaining a prosecution the arraigning of the company as an accused is imperative. In **SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla & anr. [(2005) 8 SCC 89]**, another 3-Judges Bench of the Supreme Court held that, for the liability under Section 141 of the Act of 1881 to be fastened vicariously on a person connected with a company, it would be necessary to specifically aver in the complaint filed under Section 141 that at the time the offence was committed, the person accused was in charge of and was responsible for the conduct of business of the company. According to the Supreme Court, this averment is an essential requirement of Section 141 and had to be made in the complaint and without such an averment being made therein, the requirements of Section 141 cannot be said to be satisfied.

In the light of the aforestated precedential edicts and given the fact that the respondent/complainant did not even explain as to how he was authorized to maintain the complaint case on behalf of the proprietorship concern in which he only claimed to be a Manager, this Court finds substantial merit in all the three grounds raised by the learned senior counsel.

Viewed thus, the complaint case in Cril. Misc. Case No. 222 of 2018/ Cril.(N.I.) Case No. 27 of 2019 on the file of the learned Chief Judicial Magistrate, Imphal West, was not maintainable and it is accordingly quashed, along with the orders dated 06.06.2019 and 06.05.2022 passed therein.

CHIEF JUSTICE