

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

CRR 1638 of 2020

Rakesh S. Kathotia & Ors.
Vs.
State of West Bengal & Anr.

For the Petitioners : Mr. Sabyasachi Banerjee
: Mr. Ayan Bhattacharyya
Mr. Deepak Jain

For the opposite party 2 : Mr. Sandipan Ganguly
Mr. Abhijit Chowdhury

Heard on: : 05th January 2021

Judgment on : : 05th January 2021

The Court:

This is an application for quashing of a complaint case under Sections 138 and 141 of the Negotiable Instruments Act so far as the present petitioners are concerned.

Supplementary Affidavit filed on behalf of the petitioners is taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioner nos. 1 and 2 had resigned from the accused company as directors on 21.06.2019 and 21.08.2019, respectively, much before the date 01.12.2019 on which the cheque in question was issued. The petitioner no. 3 was not even a director of the accused company and was a mere shareholder. As such, the present petitioners could not have been arraigned as accused in the present case. Reliance is placed on **2011(3) SCC 351, Harshendra Kumar D. Vs. Rebatilata Koley.**

Learned senior counsel for the complainant / opposite party no. 2 submits that as per Section 141 of the Negotiable Instruments Act, not only a director but anyone else in charge of and responsible to the company for the conduct of this business can be added as an accused.

I have heard the submissions of the learned counsels for the parties and have perused the revision petition and the supplementary affidavit.

It appears from the respective Form Nos. DIR 11 and 12 that the petitioner nos. 1 and 2 had indeed resigned as directors of the accused company, much before the issuance of the cheque. Admittedly, the petitioner no. 3 was not a director of the accused company.

Although there are some rather ritualistic averments in the petition of complaint that even the present petitioners were in charge of and responsible to the company for conduct of a business, it is not clear as to how and in what capacity they could be held accountable.

In view of the ratio laid down made by the Hon'ble Apex Court in the case of ***Harshendra Kumar D (supra)***, the petitioner nos. 1 and 2 have made out a case for quashing of the proceeding so far as they are concerned. I also do not find any prima facie material to keep the petitioner no. 3 arraigned as accused in this case.

In view of the above and in the interest of justice, the impugned proceeding is quashed so far as the present petitioners are concerned.

However, if any cogent evidence comes up against the present petitioners such that they could be roped in as accused by invoking Section 141 of the Negotiable Instruments Act, the complainant shall be at liberty to make an appropriate prayer before the learned trial Court.

Let the learned trial Court conclude the proceeding as expeditiously as possible.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta,J.)

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