

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 952 of 2009

SHARP INDUSTRIES LIMITED & ORS
VS.
JAYONTO ROY & ANR.

For the Petitioners : Mr. Ganesh N. Jajodia, Adv.,
Ms. Nitu Sinha, Adv.

For the Opposite Parties : None appears

Hearing concluded on : 5th September, 2022

Judgement on : 9th September, 2022

Siddhartha Roy Chowdhury, J:-

1. This is an application under Section 482 of the Cr.P.C. filed by the petitioners seeking order, quashing the proceeding being Complaint Case No. C/823/2008 pending before the learned 14th Metropolitan Magistrate Court, Kolkata under Section 138/141 of the Negotiable Instruments Act.
2. Briefly stated, the private respondent Jayonto Roy used to work for gain under petitioner no. 1 who filed the complaint under Section 138/141 of the Negotiable Instruments Act (hereinafter referred to 'N.I. Act'), consequent upon a cheque of Rs. 56,127/- issued by the

petitioner no. 1 towards salary of the respondent no. 1 being dishonoured for insufficient fund.

3. It is contended by the petitioner that having received a notice from the Opposite Party No. 1 regarding return of cheque, paid a sum equivalent to the amount of the cheque by way of demand draft which was forwarded to the Opposite Party/respondent no. 1 with a request to refund the dishonoured cheque.
4. Thus the petitioners discharged their obligations and got absolved of the criminal liability. The petitioners further contended that learned Trial Court had no reason to pass the order dated 3rd March, 2009 which demonstrates non-application of mind. It is contended that since the payment has already been made the continuation of the criminal proceeding before the learned Trial Court would amount to abuse of process of law. Hence it may be quashed.
5. Learned Advocate appearing on behalf of the petitioners submits that since the payment has already been made to the respondent no. 1 there is no reason to pass the order by the learned Trial Court on 3rd March, 2009.
6. The private respondent despite service of notice did not turn up. Upon perusal of material, I find that summon was issued by the learned Trial Court directing the petitioners, as accused persons to appear before the learned Trial Court on 17th November, 2008.
7. Therefore, the averment made in the petition that the order was passed on 17th November, 2008 is factually incorrect. If the claim of the petitioners is considered to be correct then there is ample room

available to the petitioners to bring the said fact to the notice of learned Trial Court and to get matter disposed of before the learned Trial Court itself.

8. Proviso to Section 138 of the N.I. Act says that nothing contained in the Section shall apply unless the cheque has been presented to the Bank within the period of six months from the date on which it is drawn the payee or holder of the cheque makes a demand of payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days from the date of information from the Bank regarding return of cheque as unpaid and drawer of such cheque fails to make payment of the said amount of money to the payee or to the holder of the cheque within 15 days of receipt of the said notice.
9. Here in this case the petitioners are claiming to have made the payment but no document is made available to substantiate such claim other than a photocopy of the bank draft in the name of private respondent Jayonto Roy. There is nothing to suggest that the payment was made within the period prescribed under the statute.
10. Under such circumstances, I do not find any reason to invoke the inherent power vested under Section 482 of the Cr.P.C. to quash the proceeding, as prayed for.
11. The Application is thus dismissed being devoid of merit.
12. Interim order if any, stands vacated.
13. Let a copy of this judgement be sent to the learned Trial Court for information and necessary action.

14. Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)