IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 1 of 2018

Bijay Kumar Agarwal & Ors.
-vs-
Messers Paceman Sales Promotion Private Limited

For the Petitioners	:	Mr. Pawan Kumar Gupta Mr. A. Rai Mr. Santanu Sett Ms. Sofia Nesar
For the Opposite Party	:	Mr. Ayan Bhattacharjee Mr. Amit Muhuri
Heard on	:	5.8.2022
Judgment on	:	11.08.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the proceeding being case No. CS/0051867 of 2016 under Section 138/141 of the Negotiable Instruments Act, 1881 (N.I. Act) pending before the Court of the learned Metropolitan Magistrate, 20th Court at Calcutta, present application under section 482 of the Code of Criminal Procedure (Cr.P.C.) has been preferred by accused/petitioners.

2. Mr. Pawan Kumar Gupta, learned advocate for the petitioners at the outset submits that he is not pressing this application for petitioner no. 1 and 2 but he is pressing this application for petitioner no. 3, Prem Ratan Lahoty. Mr. Gupta contended that petitioner no. 1 and 2 are the Directors of M/s. Ganapati Balaji Mills Private Limited and the opposite party is a non banking finance private limited dealing with the business of real estate. On 14.12.2015, the petitioners got a demand notice from the advocate of the opposite party due to alleged non-payment of loan amount of Rs. 50 lakhs which was allegedly taken by the said company on 12.7.2012. After receiving said demand notice, the petitioner no. 3 gave reply vide letter dated 22.12.2016 to the opposite party contending that he has already resigned before this incident from the said company namely, M/s. Ganapati Balaji spinning Mills Private Limited. On 14.1.2016, the present complaint case no. CS/0051867 of 2016 under Section 138/141 of the Negotiable Instruments Act, 1881 has been filed by the opposite party against all the three petitioners even after receipt of aforesaid reply dated 22.12.2016 given by petitioner no.3 herein. Learned advocate for the petitioner submits that in the reply dated 22.12.2016 petitioner no. 3 sent documents to the opposite party in support of his resignation on 12.07.2012. from the company.

3. Learned advocate for the opposite party Mr. Ayan Bhattacharjee submits that complainant/ opposite party in his complaint, has specifically dealt with the said issue in paragraph 9 (which should be read and treated as paragraph no.12) of his complaint and it has been specifically stated that upon receipt of the said reply from accused no. 5 i.e. petitioner no. 3 herein the petitioners made inspection of the ROC records of the accused no. 1 and upon searching opposite party obtained the annual return of accused no. 1 wherein the name of accused no. 5/petitioner no. 3 herein appears as the Director of the accused no. 1 company and hence the said notice sent by the accused no. 5/petitioner no. 3, herein is totally a misconceived notice and sent with a mala fide intent.

4. Petitioner no. 3, Prem Ratan Lahoty has filed one form no. DIR-11 as annexure and he pointed out that from column no. 4A and 4B, it is clear that said Prem Ratan Lahoty resigned from the M/s. Ganapati Balaji Mills Private Limited on 6.7.2012.

5. On the contrary, the opposite party filed one affidavit containing Form DIR-12 and pointed out that as on 30.5.2016, the said Prem Ratan Lahoty was shown as director of the said company and the column relating to the resignation date (as on that date) is lying blank. Moreover, referring a letter he also pointed out that said petitioner no. 3, gave notice of resignation of Directorship on 30.5.2016 contending that his directorship with the company stands seized with effect from 30.5.2016.

6. In view of the above, it is clear that while the case of the petitioner No.3 is that the he resigned from the said company on 6.7.2012, on the contrary, the case of the opposite party is that he resigned from the company only on 30.5.2016. The impugned three cheques are dated 20.08.2015, 22.08.2015 and 24.08.2015.

7. Accordingly the issue raised by petitioner no.3 herein is, whether petitioner no. 3 has got any responsibility for the conduct of business of the company in connection with the issuance of impugned cheque by the company in respect of which proceeding under Section 138 of the Negotiable Instruments Act has been initiated by the complainant/opposite party.

8. Needless to say that 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 but while deciding an application under section 482 of the code of criminal procedure, the High Court is only required to examine the complaint as set out by complainant, white exercising it's discretion to quash a complaint. It is fairly settled law that while exercising inherent jurisdiction under section 482, in a case where complaint is sought to be quashed , it is not proper for the High Court to consider the defence of the accused or conduct roving enquiry in respect of merits of the accusations, unless on the face of the document, it is beyond suspicion or doubt, placed by the accused that the accusation against accused cannot stand. In such a case in order to prevent injustice or abuse of process , it is incumbent upon High Court to look into those documents, which have a bearing in the matter, even at the initial stage.

9. Here the allegations in the complaint is clear from paragraph 9(serial No. should be 12) and other paragraphs coupled with documents like DIR -12 and notice mentioning date of resignation, *prima facie* discloses that at the time when the offence under section 138 of N.I. Act was committed, all the three petitioners are in charge of and was responsible to the company for the conduct of the business of the company as alleged in paragraph 4 of the complaint. When the specific allegation in complaint supported by documents like DIR-12 and notice of resignation, it is made clear that petitioners were responsible for the day to day affairs of the company and it's decisions, the defence that petitioner no. 3 was no longer the directors of the company at the time when the cheque was presented and dishonoured, had to be substantiated by the accused/petitioner and this could be done only at the stage of trial.

10. In ***State of Madhya Pradesh Vs. Awadh Kishore Gupta and others,*** reported in **AIR 2004 SC 517,** the Apex Court while dealing with the scope of power under section 482 of the code observed:-

> ***"13.****It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused……………"*

11. Having considered the aforesaid facts and circumstances of the case, CRR 1 of 2018 stands dismissed.

12. Since this is a proceeding, (being case No. CS/0051867 of 2016) under Section 138/141 of the Negotiable Instruments Act, 1881 and pending for last six years, learned Metropolitan Magistrate, 20th Court at Calcutta is hereby requested to make expeditious disposal of the case and to dispose of the entire proceeding preferably within a period of six months from the date of the order, without granting any unnecessary adjournment to either of the parties.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)