13.06.2022
Item No.13
Ct.No.34
dc.

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

C.R.A. 11 of 2010

Sri Goutam Saraswati
versus
Shri P. K. Chakraborty

Mr. Ayan Bhattacherjee	... For the Appellant.
Ms. Pampa Dey Dhabal	... For the Opposite Party.
Md. Anwar Hossain, Ms. Sujata Das	... For the State.

The records of the case, particularly the petition of complaint under Section 138 of the Negotiable Instruments Act reflects that the petition of complaint was made against the Managing Director of M/s. Sonder Technology Private Ltd. The learned trial court on an appreciation of the same, so far as the debt and liability is concerned, arrived at a finding that the accused cannot be held to be liable under Section 138 of the Negotiable Instruments Act and acquitted the accused discharging him from the bail bond.

It has been pointed out that cheque was issued by Sonder Technologie Private Limited and the 'Stop Payment' notice being marked as 'Exhibit-13' was issued by the Company. The records do not reflect that the Company has been made an accused and as such, the person responsible cannot be held solely responsible for the act and action of the Company as the substantive offence under Section 138 of the Negotiable Instruments Act would lie against the Company and the individual responsible would be held vicarious liable.

It has been settled by the Hon'ble Supreme Court in ***Aneeta Hada Vs. Godfather Travels and Tours*** reported in ***(2012) 5 Supreme Court Cases 661***. To that effect, the relevant paragraphs i.e. paragraphs 58 and 59 of the said judgments are quoted below :

> "***58.*** *Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the complany is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well s the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted."*
>
> *"**59**. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in*

> *Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove.*"

The settled proposition of law does not allow the conscience of this Court to interfere with the order of acquittal passed by the learned trial court although for different reasons.

Accordingly, CRA 11 of 2010 is dismissed.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

Lower court records be sent down to the learned court below immediately.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Tirthankar Ghosh, J.)