

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

IA No: CRAN/2/2022

In

C.R.R. 281 of 2021

Kunal Gupta

Vs.

The State of West Bengal & Ors.

**For the petitioner : Mr. Karan Dudhwewala, Adv.
Mr. Rishav Singh, Adv.**

Heard on : 18.07.2022

Judgment On : 18.07.2022.

Bibek Chaudhuri, J.

Affidavit of service be kept with the record.

CRAN 2 of 2022 is an application for extension of interim order which was initially granted by a Coordinate Bench of this Court on 3rd February, 2021 and subsequently extended time to time.

It is submitted on behalf of the petitioner that the opposite party has not appeared in spite of receipt of notice of the instant proceeding. It appears from the affidavit-of-service that the notice of the instant proceeding was also served upon the opposite party. However, he has not appeared before this Court.

The petitioner has filed the instant criminal revision on the ground that the accused no.2 being the proprietor of M/s. Om Ganpati Caterers issued a cheque in the name of the opposite party no.1/complainant. The said cheque was dishonoured which prompted the complainant/opposite party no.1 to initiate a proceeding under Section 138 read with Section 141 of the Negotiable Instruments Act.

It is also submitted by the learned Advocate for the petitioner that Section 141 has no manner of application in the said complaint case. Accused No.2 was the proprietor of M/s Om Ganpati Caterers and it is settled that a proprietorship business is represented by its proprietor. The accused No.2 being the proprietor of M/s Om Ganpati Caterers might be liable in the said proceeding. The petitioner namely Kunal Gupta is the son of accused No.2, Sanjay Gupta. He had no role in the business of his father. He did not issue any cheque in favour of the complainant. Therefore, he was unnecessarily impleaded as an accused in the complaint under Section 138 of the Negotiable Instruments Act.

Having regard to the fact that the opposite party no.1 has not appeared in spite of receipt of notice, I am inclined to dispose of the instant revisional application here and now.

The learned Advocate for the petitioner has filed a copy of the death certificate of accused No.2 who issued the cheque in question in favour of the complainant.

Since the above-mentioned business under the name and style of M/s. Om Ganpati Caterers is not owned and possessed by the present petitioner and he did not issue any cheque in favour of the complainant/opposite party, he cannot be held liable under Section 138 of the Negotiable Instruments Act.

Accordingly, the criminal revision is allowed.

Complaint Case No.CS/8112 of 2020 under Section 138 read with Section 141 of the Negotiable Instruments Act, pending before the learned Metropolitan Magistrate, 11th Court at Calcutta be quashed as against the petitioner/accused no.3.

Petitioner is at liberty to obtain server copy of the order and communicate this order to the learned Court below.

The instant revision, is, thus, **disposed of**.

(Bibek Chaudhuri, J.)

**Mithun De/
A.R. (Ct).
SI No.13.
D/L.**