

D/L71
June 8,
2022
Bpg.

C.R.R. No.635 of 2022

In Re: A petition under Section 397/401 read with Section 482 of the
Code of Criminal Procedure;

Tushar and Company & Anr.
Versus
State of West Bengal & Anr.

Mr. Falguni Bandopadhyay,
Ms. Riya Ballav
...for the petitioners.

Affidavit of service filed be kept with the record.

Learned advocate appearing for the petitioners contends that the petitioner no.1 is a proprietorship concern whose proprietor happens to be the petitioner no.2. According to the learned advocate, the two cannot be termed as different entity and the provisions of Section 141 of the Negotiable Instruments Act are not applicable.

The grievance of the petitioners are that the learned Magistrate directed to file an application under Section 305 of the Code of Criminal Procedure for petitioner no.1.

I do not find any illegality in the submissions advanced by the learned advocate appearing for the petitioners. Learned Magistrate, as such, is directed to check from the records the following:

1. Whether the petitioner no.2 is the signatory to the cheque?
2. Whether the petitioner no.2 signed the cheque as proprietor of the petitioner no.1?

3. Whether the petitioner no.1 and petitioner no.2 were admittedly considered to be the proprietorship firm and the proprietor respectively?

If the aforesaid materials/answers are in the affirmative, learned Magistrate will strike down the petitioner no.1 as an accused and would pursue the case of the proprietor (if found to be so) as an accused in the present case.

Learned advocate for the petitioners is directed to place the order before the court within a fortnight from date.

Learned Magistrate after issuing notice to both parties would consider and dispose of the issues referred to above in the mode and manner as stated above by 1st August, 2022. Any order passed by the learned trial court by resorting to harsher process of law in respect of the petitioners be kept in abeyance till 1st August, 2022.

With the aforesaid observations, CRR 635 of 2022 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)