

Form J(1)

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

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

CRR 817 of 2022

**Dhunseri Tea and Industries Ltd.
Vs.
Chopra Brothers & Ors.**

**For the petitioner : Mr. Sabyasachi Banerjee, Adv.,
Mr. Ayan Bhattacharjee, Adv.,
Ms. Cedric Fernandez, Adv.,
Mr. Apalak Basu, Adv.,
Ms. Minal Palana, Adv.**

**For the opposite
Parties : Ms. S. Roy Chaudhury, Adv.
Mr. H. Singh, Adv.**

Judgement on : 28.09.2022.

Bibek Chaudhuri, J.

The question that is germane for consideration in the instant revision is as to whether a Learned Magistrate while taking up the hearing of a complaint under Section 138 of the Negotiable Instruments Act can refer the dispute to arbitration under Section 5 read with Section 8 of the Arbitration and Conciliation Act, 1996.

Shorn of unnecessary details, it is necessary to mention that the petitioner as a complainant filed CS 21313/2020 before the Learned Chief Metropolitan Magistrate, Calcutta under Section 138 of the Negotiable Instruments Act alleging, *inter alia*, that the accused

persons in discharge of his existing debt or liability issued a cheque in favour of the complainant. The said cheque was dishonoured and, therefore, accused is liable to be prosecuted under Section 138 of the Negotiable Instruments Act.

The said complaint was transferred to the 8th Court of the Learned Metropolitan Magistrate, Calcutta for trial and disposal.

The accused persons filed an application under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996 praying for stay of all further proceeding in connection with CS 21313/2020 and to refer the dispute between the parties in arbitration. Surprisingly enough, the Learned Magistrate by his order dated 4th March, 2022 referred the matter to an arbitration under Sections 5 and 8 of the said Act.

The petitioner has challenged the legality, validity and propriety of the order dated 4th March, 2022. Section 5 of the Arbitration Act runs thus:-

Section 8 deals with the power of a judicial authority to refer parties to agreement where there is an arbitration agreement. The provision runs thus.

In ***Trisuns Chemical Industry –Vs.- Rajesh Agarwal & Ors.*** Reported in ***A.I.R.1999 SC 3499*** the Apex Court was called upon to decide as to whether a complaint can be quashed in view of existence of an arbitration agreement between the parties. The Hon'ble Supreme Court was pleased to hold that quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions. Provision incorporated in the agreement for referring the dispute to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence of fraudulent representation and cheating. Arbitration is a

remedy for affording reliefs to the party affected by breach of the agreement. However, the scope of a criminal complaint is absolutely different albeit, the same act may be connected with the discharge of any function under the agreement.

In the instant case, the complainant has lodged the complaint under Section 138 of the Negotiable Instruments Act which is a criminal offence prescribing imprisonment and penalty for the failure on the part of the accused to repay the cheque amount within statutory period of time which has been dishonoured.

The Learned Magistrate while exercising jurisdiction under Section 11 read with Section 14 of the Code of Criminal Procedure cannot refer a dispute in arbitration under the Arbitration and Conciliation Act, 1996.

Similar view was taken by the Hon'ble Supreme Court in connection with a complaint under Section 138 of the Negotiable Instruments Act in ***Sri Krishna Agencies –Vs.- State of Andhra Pradesh & Anr.*** Reported in ***(2009) 1 SCC 69***. Factual background of the said decision is that the High Court quashed a complaint under Section 138 of the Negotiable Instruments Act on the ground that the appellant had already taken resort to arbitration proceedings. The Hon'ble Supreme Court while setting aside the said order passed by the High Court was pleased to hold that there can be no bar to the simultaneous continuance of criminal proceeding and a civil proceeding if the two arise from separate causes of action. This Court has also taken the same view relying on the above-mentioned Supreme Court decisions ***in Gopal Das Bagri & Ors. –Vs. State of West Bengal & Ors.*** (CRR 2064/2014, decided on 1st October, 2019) reported in ***Manu/WB/2530/2019***.

For the reasons stated above, this Court does not have any other conclusion but to hold that the impugned order dated 4th March, 2022 passed by the Learned Metropolitan Magistrate, 8th Court at Calcutta is illegal, bad in law and inoperative.

For the reasons stated above, the instant revision is **allowed**. The order dated 4th March, 2022 passed by the Learned Metropolitan Magistrate, 8th Court at Calcutta is set aside. The Learned Magistrate is directed to take up the hearing of the case under Section 138 of the Negotiable Instruments Act in accordance with law.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 07.