

31.03.2022

Item No.77
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 749 of 2020

**Aman Kumar Agarwal
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973 filed for quashing of the proceedings of Complaint Case being CN No. 679 of 2019 under Sections 138/141 of the Negotiable Instruments Act pending before the learned Metropolitan Magistrate, 13th Court, Calcutta (TR No. 1515 of 2019).

Mr. Ayan Bhattacharjee,
Mr. Basabraj Chakraborty,
Mr. Debraj Sinha,
Ms. D. Roy,
Ms. S. Mondal ... For the Petitioner.

Mr. Imran Ali,
Ms. Debjani Sahu ... For the State.

Ms. Nilanjana Adhya ... For the Opposite Party No.2.

Affidavit-of-service filed in Court today be kept with the record.

Mr. Bhattacharjee, learned advocate appearing for the petitioner submits that the proceedings are under Sections 138/141 of the Negotiable Instruments Act and it has been alleged in the petition of complaint in a very vague manner, the petitioner approached the complainant-company. No specific role of the petitioner as a Director was assigned at the relevant time when the offence was committed. Learned advocate also draws the attention of this Court to the downloaded Form No. DIR-11 wherefrom learned advocate submits that the petitioner has resigned as Director on

01.10.2016. It has been pointed out that the cause of action of this case arose on or about June 2019.

Learned advocate appearing for the complainant/opposite party no.2 has preferred an affidavit-in-opposition wherein a number of documents have been enclosed. Learned advocate draws the attention of this Court to paragraph 2 of the petition of complaint and emphasises that the petitioner as a Director participated in the transaction and is responsible for day-to-day business of the company. Additionally, attention of this Court has been drawn to a document of the year 2011 in respect of an undertaking which was signed by one A. Agarwal. Learned advocate has also stressed on the issue that there was no reply to the notice which was received by the petitioner and as such, it would be premature to interfere with the proceedings when the facts are hazy and participation of the petitioner in the whole transaction cannot be ruled out.

I have considered the submissions advanced on behalf of the learned advocates for the petitioner as well as the complainant/opposite party no.2. On a scrutiny of the materials appearing from the records of this revisional application, I find that the allegations in respect of the petitioner in the petition of complaint are levelled in paragraphs 2, 9 and 11. On the other hand, the document relied upon by the petitioner in respect of downloaded copy of the Ministry of Corporate Affairs reflects that resignation of the petitioner to be on 01.10.2016 which is much more prior to the date on which cause of action arose.

In view of the decision of the Hon'ble Supreme Court in ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another*** reported in ***(2005) 8 Supreme Court Cases 89*** and also subsequent decision of the Hon'ble Supreme Court in ***Harshendra Kumar D Vs. Rebatilata Koley and Others*** reported in ***(2011) 3 Supreme Court Cases 351*** on the issue regarding implication of the Director, I am of the opinion that the petitioner has been, prima facie, able to make out a case for interference by this Court at this stage.

Accordingly, the proceedings, so far as the present petitioner is concerned, are to be terminated at this stage. Obviously, this will not preclude the complainant to adduce evidence against the petitioner in course of trial and take out an application under Section 319 of the Code of Criminal Procedure if evidence surfaces out against the petitioner.

Learned Magistrate, at that stage, would consider whether the documents referred to by the complainant have merits to bring the petitioner within the ambit of Section 141 of the Negotiable Instruments Act and would be at liberty to proceed in accordance with law.

For the present, further continuance of Complaint Case being CN No. 679 of 2019 under Sections 138/141 of the Negotiable Instruments Act, against the petitioner viz. Aman Kumar Agarwal, is hereby quashed.

With the aforesaid observations, the revisional application being CRR 749 of 2020 is allowed.

Interim order, if any, is hereby made absolute.

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

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.)