Form J(2) **IN THE HIGH COURT AT CALCUTTA**

Criminal Revisional Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Bibek Chaudhuri

CRR 2201 of 2022

M/s. M. M. Plastic Industries & Anr.

Vs.

The State of West Bengal & Anr.

For the petitioner	**:**	**Mr. Chittapriya Ghosh, Adv.,** **Mr. Sabyasachi Roy Chowdhury, Adv.,** **Ms. Priyanka Saha, Adv.,** **Ms. Komal Singh, Adv.**
Heard & **Judgement on**	**:**	**11.07.2022.**

Bibek Chaudhuri, J.

Petitioner being an accused of a case under Sections 138/141 of the Negotiable Instrument Act has challenged the proceeding on the ground that he has no existing debt or liability and the cheque in question was dishonoured by the Bank on the ground 'account frozen'.

Learned Advocate for the petitioner draws my attention to paragraphs 3, 4 and 5 of the petition of complaint filed by the opposite party no. 2 against the petitioner. In gist, it is alleged by the complainant/opposite party no. 2 that the opposite party no. 2 offered to sell 6849 shares to the petitioner who agreed to purchase the aforesaid shares and instructed the complainant/company to proceed with the demonstration for transfer of the shares in the name of the accused persons. In discharge of his existing legal liability the accused issued an account payee cheque on 1st March, 2021 for a sum of Rs.25,00,000/- in favour of the complainant company to enable the complainant for initiating the process of transfer of shares to the accused persons. Thus, it is submitted by the Learned Advocate for the petitioner that the share was not transferred by the complainant/company in favour of the petitioner on the date of issuance of cheque. Therefore, the said cheque was issued in advance and as no share was transferred in favour of the petitioner, no criminal liability accrues.

In support of his contention the Learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in ***M/s. Indus Airways Pvt. Ltd. & Ors. –Vs.- M/s. Magnum Aviation Pvt. Ltd. & Anr.*** reported in ***(2014) 12 SCC 539***. In the said decision, it was observed by the Hon'ble Supreme Court that there is a fine distinction between civil liability and criminal liability under Section 138 of the Negotiable Instrument Act. If at the time of entering into a contract, it is one of the conditions of the contract that the purchaser has to pay the amount in advance and there is breach of such condition, then purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138 of the Negotiable Instrument Act.

Having heard the Learned Advocate for the petitioner and on perusal of the instant application as well as the decision cited on behalf of the petitioner, it is to be looked into as to whether the opposite party no. 2 has already transferred the shares or not. If the opposite party no. 2 actually transferred the shares, there exists liability of the petitioner to the complainant. In such case charge under Sections 138/141 of the Negotiable Instrument Act can be framed. If on the other hand it is found that the opposite party no. 2 did not transfer the share, it is to be held that issuance of cheque by the petitioner in advance creates a civil liability.

The matter can only be disposed of at the time of examination of the accused under Section 251 of the Code of Criminal Procedure. Therefore, the instant criminal revision is disposed of directing the Trial Court to give an audience to both the complainant and the accused before recording the plea. If it is found that the shares were already transferred to the petitioner, then only the Trial Court will record the plea against the petitioner. If, on the other hand, it is found that the shares have not been transferred, the complaint under Section 138 of the Negotiable Instrument Act shall be dismissed on the ground of absence of any cause of action against the petitioner.

With the above direction, the instant criminal revision is disposed of.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)