

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. (SB) 124 of 2022

**M/s. Shalimar Paints Ltd
versus
The State of West Bengal and another**

For the Appellant : Ms. Sayanti Santra.

For the State : Ms. Manisha Sharma.

Heard On : 15.11.2022.

Judgement On : 15.11.2022.

Tirthankar Ghosh, J. :

Affidavit-of-service so filed by the appellant be kept with the record. Affidavit-of-service reflects that service was effected upon the private respondent no.2.

Today, when the matter is taken up, none represents the private respondent no.2.

This is an appeal under Section 138 of the Negotiable Instruments Act wherein the accused has been acquitted under Section 256 of the Code of Criminal Procedure for non-appearance of the complainant and the same was at the stage of the evidence.

Learned advocate appearing for the appellant draws the attention of this Court to the ground nos.(III), (IV) and (V) wherefrom it reflects that the complainant-company at the relevant point of time was being represented by an officer who was regularly following up and the said officer resigned from the company without informing regarding the pendency of complaint case no.C/8274 of 2011 pending before the learned Metropolitan Magistrate, 16th Court, Calcutta. Subsequently, when the same came to the knowledge of the complainant, they engaged another officer who could trace out the records of the case before the learned Metropolitan Magistrate, 16th Court, Calcutta and then only it came to the knowledge that on 21st November, 2016, as none represented the complainant-company or show cause was filed for a number of days, the learned Metropolitan Magistrate, 16th Court, Calcutta had no other option except to acquit the accused under Section 256(1) of the Code of Criminal Procedure.

Having regard to the fact that the accused was acquitted not on the merits of the case, but on default of the representative of the

complainant-company not appearing which resultantly would affect the finance of the complainant-company, I am of the opinion that an opportunity must be granted to the complainant-company to prove its case on merits. There is to be adjudication for a decision of a court on the legally enforceable debt or liability in respect of the cheque issued by the accused.

In view of the aforesaid, the order dated 21.11.2016 passed by the learned Metropolitan Magistrate, 16th Court, Calcutta is hereby set aside. The learned Magistrate is directed to proceed with the trial of the case. The complainant-company would be represented before the learned Metropolitan Magistrate, 16th Court, Calcutta on 30th November, 2022 when the records of the case would be placed before the learned Metropolitan Magistrate, 16th Court, Calcutta. The learned court would thereafter issue process against the accused and proceed in accordance with law.

Thus, CRA (SB) 124 of 2022 is allowed.

Pending application, if any, is consequently disposed of.

Department is directed to communicate this order to the learned Metropolitan Magistrate, 16th Court, Calcutta.

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 given to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

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