

07.04.2022
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SB
Ct. No.35

CRR 3165 of 2016

In the matter of : Sanwal Tirbawal @ Sunwal Tirbawal

Mr. Ayan Bhattacharyya
Ms. Sutapa Mitra
Mr. Somdev Ash ... for the Petitioner

This is an application for quashing of a Complaint Case No. 103C of 2015 under Section 138 of the Negotiable Instruments Act, 1881, pending before the learned Judicial Magistrate, 2nd Court, Bishnupur Bankura.

The sole ground that has been advanced on behalf of the petitioner for quashing the complaint is that though the relevant cheque was issued by a company namely, Basukinath Food Processors Limited, through one of its directors, neither notice was given under Section 138(b) against the company nor the said company was made a party in the complaint. Only the director, who signed the cheque, was the sole accused in the complaint.

Mr. Bhattacharyya, learned counsel on behalf of the petitioner places reliance upon the judgments reported at **(2012) 5 SCC 661 (Aneeta Hada vs. Godfather Travels and Tours Private Limited)** and **(2019) 3 SCC 793 (Himanshu vs. B. Shivamurthy)**.

The law appears to have been settled by the Supreme Court in **Aneeta Hada (supra)** wherein it has been held in paragraph 59 as follows:-

“59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

The proposition of law as laid down in **Aneeta Hada (supra)** had been followed in **Himangshu (supra)**.

In the present case it appears that the cheque was signed by the petitioner as a director of the company, but in the relevant complaint the company namely, Basukinath Food Processors Limited has not been arraigned as an accused. In view of the ratio laid down in **Aneeta Hada (supra)** the complaint is not maintainable.

Accordingly, the Complaint Case No. 106C of 2015 under Section 138 of the Negotiable Instruments Act, 1881, pending before the learned Judicial Magistrate, 3rd Court, Bishnupur Bankura stands quashed.

However, quashment of this complaint will not prevent the opposite party no. 2 to any other steps in accordance with law.

The revisional application being CRR 3165 of 2016 is, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the petitioner upon compliance with all the requisite formalities.

(Kausik Chanda, J.)