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18.7.2022
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CRR 3429 of 2019

In the matter of : Mahabir Polyfabs Pvt. Ltd. & Ors.

…….Petitioners

Mr. Suman Chakraborty

Mr. Partha Sarathi Hazra …for the petitioners

Ajoy Kumar Mukherjee, J. (Oral):

Affidavit of service so filed by the learned advocate on behalf of the petitioners, be kept with the record.

Inspite of service of notice opposite party remains unpresented.

The present revisional application has been preferred for quashing of the complaint case being no. CS/72222 of 2018 (TR 433 of 2019) under Section 138/141 of the Negotiable Instrument Act.

The learned advocate for the petitioner Mr. Suman Chakraborty contended that the impugned cheque was issued by petitioner no.1/accused for discharging legal liabilities towards the complainant being cheque no. 001572,001566, 001568 dated 29.04.2018,19.05.2018 and 21.05.2018 respectively drawn on Kotak Mahindra Bank, Ballyganj Road amounting to Rs. Rs 3,983, Rs 1,59,064, Rs 79,532 respectively and said cheque was dishonoured for the reason of "stop payment" direction given to the bank, as appearing from Bankers slip dated 30.6.2018 and 02.07.2018 which, was received by the complainant on 02.7.18 and 04.07.18. Accordingly, payment notice dated 09.7.2018 was issued by the complainant and on the receipt of the payment notice dated 09.07.2018 issued by the advocate for the complainant, the petitioners contacted with the complainant and requested to allow some time to make their payments against the aforesaid cheque which was dishonoured.

The complainant without allowing time to the petitioners filed the said complaint case being CS/72222 of 2018 before the learned 19th Metropolitan Magistrate at Calcutta. The petitioner no. 3 being one of the Director of the company surrendered before the trial court and obtained bail on 7.8.2019.

The learned advocate for the petitioners submits that they have already paid the entire cheque amount to the complainant and the complainant has received the same by acknowledging the said amount and it is reflected from the bank details which is made as Annexures with this application.

Learned advocate for the petitioner further submits that under Section 147 of the Negotiable Instrument Act, offence under the said act is a compoundable offence and as payment has already been made against the said cheque amount, the aforesaid proceeding being CS/72222 of 2018 is required to be quashed.

On perusal of the complaint, it appears that the complainant has sent notice through speed post with acknowledgment due on 9.7.2018 demanding amount covered under the aforesaid dishonoured cheque, within 15 days from the receipt of the notice and said notice was served upon the accused persons/petitioners on 10.7.2018, 11.7.2018 and 13.7.2018 respectively but in spite of that, accused persons/petitioners failed to pay the cheque amount within 15 days of receipt of notice and as such the complaint was filed on 09.08.2018.

Before going to further details let us first state the essential ingredients to constitute offence under section 138 of Negotiable instrument Act, (N.I. Act).

1. There should be a drawer that draws the cheque.

2. The cheque drawn should be in discharge of legally enforceable debt or liability.

3. Presentation of cheque to drawee bank.

4. The cheque returned by the bank unpaid on account of insufficient fund or that it exceeds arrangement.

5. Within thirty days of receiving a memo of return from the bank, a notice served upon drawer for payment of the amount involved in the cheque.

6. The drawer of cheque fails to pay the said money within 15 days from the receipt of the said notice.

It is to be noted here that if the drawer pays the debt within 15days, there would be no offence. The offence is said to be committed under section 138 of N.I. Act only when he fails to pay the debt within 15 days.

If one goes through the averment made in the written complaint, it satisfies all the above-mentioned requirements and as such averment in the complaint clearly discloses offence under section 138 of the N.I. Act, and the offence completed when admittedly petitioners failed to pay the cheque amount demanded in the notice within 15 days from the date of receipt of notice.

The parameters of the jurisdiction under section 482 have been reiterated in a consistent line of authorities and it is well settled that at the stage when the High Court considers a petition for quashing criminal proceedings under section 482 of the Cr.P.C., the allegations in the complaint must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the court may be justified in exercising it's jurisdiction to quash.

Here from a reading of the complaint it is abundantly clear that if the allegations are taken as proved, a clear case under section 138 of N.I. Act has been made out. So the quashing of proceeding before the trial is not permissible.

Now petitioners have contended that subsequently they have made payment of entire cheque amount and as such under section 147 of the N.I. Act, the offence is to be compounded. Once offence completed under section 138 of N.I. Act, Compounding essentially involves a compromise or agreement and there cannot be a one way traffic whilst entering into a compromise. If the complainant is not willing to accept a compromise, the same should not be imposed upon him by the court and the matter will have to be dealt with in accordance with law. The accused is not entitled to get the offence compounded at his will, specially when the complainant has any objection to compound the offence. However permission from the court is not required to compound the offence under the N.I. Act as there is no such indication in the Act. Accordingly once the parties are mutually agreeable about composition of offence, the offence can be compounded even without the leave of the court, but for that it essentially involves a compromise or agreement.

In view of above, the revisional applications being CRR 3429 of 2019 is dismissed, without cost.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)