33 **26.04.2023**
ss

CRR 124 of 2012
With
CRAN 6 of 2014 (Old CRAN 1953 of 2014)
With
CRAN 7 of 2014 (Old CRAN 3644 of 2014)

Mrs. Rekha Malhotra & Ors.
Vs.
The State of West Bengal & Anr.

Mr. Anirban Dutta
Mr. Sayantan Sinha
… … for the petitioners

Mr. B.K. Roy
Ms. Sima Biswas
… … for the State

Heard Mr. Dutta, learned counsel representing the petitioners.

None is appearing on behalf of the opposite party no.2.

This application under Section 482 of the Code of Criminal Procedure has been filed seeking quashing of the proceeding being Complaint Case No.C-211 of 2011 pending before the learned 10th Court Judicial Magistrate at Alipore under section 138 read with 141 of the Negotiable Instrument Act.

Briefly stated, Shri N.K. Chaudhary, HUF, represented by Nanda Kishore Choudhary filed a petition of complaint stating, inter alia, that the petitioners are running a business Bill of Exchange and share trading etc. and has discounted a number of Bills of Exchange, accepted and passed by the accused company through the directors against which post dated cheques were issued.

In course of such business the accused persons on behalf of the company issued cheque amounting to ₹4,00,000/- (Rupees four lakh only) drawn on SBI, Kalighat Branch, being cheque no.222005 dated 16th August, 2010. The said cheque, however, was dishonoured by the banker of the accused company with a remark “not arranged for”.

The complainant got the information on 18th January, 2011. Thereafter, a notice under section 138 of the N.I. Act was issued through the lawyer calling upon the accused company to pay the cheque amount within 15 days from the date of receipt of the notice, but it was not complied with. Hence, the petition of complaint.

Learned trail Court after complying with the provisions of section 200 Cr.P.C. issued notice and accused persons surrendered to the jurisdiction of the learned trial Court. Thereafter, this application under consideration was filed.

From the order-sheet I find that on 7th August, 2012 the Hon’ble Justice Kanwaljit Singh Ahluwalia (as His Lordship then was) was pleased to dismiss the petition qua the petitioner no.2, Pradeep Kumar Malhotra.

Mr. Anirban Dutta, learned counsel for the petitioners submits that the petitioner nos.1 and 4 were not associated with the accused company. They retired on and from 02.03.2010. Therefore, these two petitioners cannot be saddled with any criminal liability whatsoever for dishonour of cheque dated 16.08.2010.

It is further contended that in the petition of complaint there is no averment, indicating the role played by the petitioner no.3 in day to day affair of the company. According to Mr. Dutta, under such circumstances, petitioner no.3 may not be directed to stand the trial.

To buttress his submission Mr. Dutta relied on the judgement of the Hon'ble Apex Court in the case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another, (2005) 8 SCC 89.

In paragraph 18 of the said judgement it is held :

> "18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.
>
> 19. In view of the above discussion, our answers to the questions posed in the reference are as under :
>
> (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to be company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.”

I have perused the petition of complaint and I find that the complainant adverted that the accused persons were the directors who used to look into the day to day affairs of the company. Unlike petitioner no.4, there is nothing to suggest that the petitioner no.3 did not play any role in day to day affair of the company.

However, Mr. Dutta, fairly submits that he does not want to press this revisional application as against the petitioner no.3, Mohit Korpal.

Since there is every reason to hold that the petitioner no.1 and the petitioner no.4 were no way associated with the company as on 16th August, 2010, when the cheque was issued they cannot be asked to stand the trial. The proceeding before the learned trial Court being Complaint Case No.C-211 of 2011 stands quashed qua the petitioner no.1, Mrs. Rekha Malhotra and the petitioner no.4, Mrs. Urvashi Korpal.

This revisional application is, thus, disposed of.

Connected applications are also disposed of.

Copy of this order should be sent to the learned trial Court for information and necessary action.

Urgent photostat copy of this order be made available upon usual condition if applied therefor.

(Siddhartha Roy Chowdhury, J.)