

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R. 624 of 2021

***M/s. Bell Finvest (India) Limited & Ors.
versus
The State of West Bengal & Anr.***

For the Petitioners : Mr. Sourav Chatterjee,
Ms. Usha Doshi,
Ms. Priyanka Gope.

For the Opposite Party No.2. : Mr. Dipanjan Dutt,
Mr. Amitava Mitra,
Ms. Antara Choudhury,
Mr. Surojit Saha.

Heard On : 13-01-2023, 19-01-2023 & 24-01-2023.

Judgement On : 24-01-2023.

Tirthankar Ghosh, J. :

The present revisional application has been preferred challenging the continuance of the proceedings being CS-10059/2020 under Section 138 read with Section 141 of the Negotiable Instruments Act pending before learned Metropolitan Magistrate, 11th Court, Calcutta.

The petitioners approached this Court at a stage when the learned Magistrate after non-response to the summons was pleased to

issue bailable warrant of arrest and the accused nos. 2 and 3 appeared before the court and prayed for bail.

Mr. Chatterjee, learned advocate appearing for the petitioners submitted that paragraph 3 of the petition of complaint is insufficient to implicate all the persons. Learned advocate has drawn the attention of the Court to paragraph 3 of the petition of complaint which is set out as follows :

“3. That the accused persons has been residing and/or carrying on their business from the addresses as mentioned hereinabove in the cause title. The accused nos. 2 is the Authorised Signatory and Director and accused no.3 is the Director of the accused no.1 and are responsible for the day to day affairs of the accused no.1, which is a Limited company.”

Learned advocate for the petitioners also drew the attention of the Court to the order issuing process passed on 13.03.2020 by the learned Metropolitan Magistrate, 11th Court, Calcutta and emphasised that the provisions of Section 202 of the Code of Criminal Procedure were not complied with in spite of the fact that the petitioners were of Mumbai which is outside the jurisdiction of the court of the learned Metropolitan Magistrate, 11th Court, Calcutta. Referring to the order dated 13.03.2020, learned advocate submitted that nowhere it has been recorded that prior to issuance of process, the exercise which has been conducted by the learned Magistrate do fall under Section 202 of the Code of Criminal Procedure and the reference to the word ‘considered’

was in respect of the materials on record, affidavit in chief and documents. In order to substantiate his argument, learned advocate for the petitioners has relied upon a decision of the Hon'ble Supreme Court In Re: ***Expeditious Trial of Cases Under Section 138 of the N.I. Act 1881*** reported in **2021 SCC OnLine SC 325**. Attention of the Court was drawn to the heading 'Inquiry Under Section 202 of the Code in relation to Section 145 of the Act'. Paragraph 24(2) of the said judgement was emphasised by the learned advocate which is quoted below :

“24(2). Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.”

Learned advocate for the petitioners has also relied upon a judgement of this Hon'ble Court in ***Sheetal Amit Patil and Another Vs. State of West Bengal*** reported in **2021 SCC OnLine Cal 1693**. Attention of the Court was drawn to paragraphs 16 and 19 of the said judgement which are quoted below :

“16. The question whether Section 202 of the Code is mandatory in respect of a proceeding under Section 138 of the Negotiable Instruments Act or not is now well settled. In Re : Expeditious trial of cases under Section 138 of N.I. Act, 1881, reported in 2021 SCC OnLine SC 325, a Constitution Bench of the Hon'ble Apex Court, *inter alia*, held as follows:

“24. The upshot of the above discussion leads us to the following conclusions:

.....

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the Court.

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

.....”

“**19.** However, since no mandatory enquiry was undertaken in clear terms under Section 202 of the Code even though the accused resided beyond the territorial jurisdiction of the learned Trial Court, the order issuing process and the subsequent orders passed by the learned Trial Court are set aside and the matter is remanded back to the learned Trial Court for proceeding afresh from the stage of enquiry as contemplated under Section 202 of the Code.”

Learned advocate for the petitioners after relying upon the aforesaid judgements submitted that the coordinate Bench of this Court was pleased to follow the Larger Bench decision of the Hon’ble Apex Court and expressed its finding in respect of an enquiry to be conducted under Section 202 of the Code of Criminal Procedure. Additionally, it has been submitted that in view of the incomplete averments made in the petition of complaint with regard to the petitioner no.3, he may be relieved from further facing the criminal proceedings.

Mr. Dutt, learned advocate appearing for the complainant/opposite party no.2 relied upon a decision of the Hon’ble

Supreme Court in ***Sunil Todi and Others Vs. State of Gujarat and Another*** reported in ***2021 SCC OnLine SC 1174***. Learned advocate has referred to paragraphs 46 and 47 of the said judgement which are quoted below :

“**46.** Section 145 of the NI Act provides that evidence of the complainant may be given by him on affidavit, which shall be read in evidence in an inquiry, trial or other proceeding notwithstanding anything contained in the CrPC. The Constitution Bench held that Section 145 has been inserted in the Act, with effect from 2003 with the laudable object of speeding up trials in complaints filed under Section 138. Hence, the Court noted that if the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. Consequently, it was held that Section 202(2) CrPC is inapplicable to complaints under Section 138 in respect of the examination of witnesses on oath. The Court held that the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under Section 202.”

“**47.** In the present case, the Magistrate has adverted to:

- (i) The complaint;
- (ii) The affidavit filed by the complainant;
- (iii) The evidence as per evidence list and; and
- (iv) The submissions of the complainant.”

It has been submitted by the learned advocate for the complainant/opposite party no.2 that in view of the efforts which have

been undertaken by the learned Magistrate while issuing process, it can be said that there no stone has been left unturned to assess the continuation of the proceedings and to complete the ambit of Section 202 of the Code of Criminal Procedure particularly with reference to the object for which the amended provision has been incorporated in the Act.

Mr. Chatterjee, learned advocate for the petitioners also rebutted the contentions and findings in **Sunil Todi's** case (supra) on the ground that if the Division Bench of the Hon'ble Supreme Court and the Larger Bench differ in their findings, then according to the doctrine of precedents the findings of the Larger Bench is to be followed.

I have considered the submissions of the learned advocates appearing for the parties both with regard to the continuation of the proceedings, the compliance of Section 202 of the Code of Criminal Procedure and the additional prayer advanced by Mr. Chatterjee, learned advocate for the petitioners regarding the proceedings to be quashed so far as the petitioner no.3 is concerned.

So far as the first prayer advanced by the petitioners is concerned which refers to the orders passed by the Debts Recovery Tribunal as also the issues relating to the account closed and the averments made in the petition of complaint, I am of the opinion that the same do not deter the

continuance of the proceedings at this stage and as such, do not warrant any interference.

So far as the issue relating to Section 202 of the Code of Criminal Procedure is concerned, I find that in the order dated 13.03.2020, the learned Magistrate has recorded "*Perused the materials on record, affidavit in chief and documents*". In paragraph 12 of the Larger Bench judgement of the Hon'ble Supreme Court, it has been held - "*If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202*". In **Sunil Todi's** case (supra), the Hon'ble Supreme Court in paragraph 47 has approved the manner in which the Magistrate proceeds to issue process after adverting to the complaint, the affidavit filed by the complainant, the evidence as per evidence list and the submissions of the complainant. In **Sheetal Amit Patil's** case (supra), it has been held that the enquiry must be undertaken in clear terms and after making such enquiry by way of taking evidence on affidavit or restricting the enquiry to examination of documents or not, learned court would assess whether there are sufficient grounds to issue process against the accused.

I have taken into account the petition of complaint, the affidavit filed under Section 145 of the Negotiable Instruments Act as also the

order dated 13.03.2020. I have also taken into account the decision of the Hon'ble Supreme Court in ***S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan*** reported in **2022 SCC OnLine SC 1238** and paragraph 47 of the decision of the Hon'ble Apex Court in ***Sunil Todi's*** case (supra) where the final conclusions were summarized by the Hon'ble Supreme Court.

So far as the provision or compliance regarding Section 202 of the Code of Criminal Procedure is concerned, the finding in paragraph 12 of the Larger Bench of the Hon'ble Supreme Court is in noway different and distinct from the observations made in paragraph 46 and 47 of Sunil Todi's case (supra).

By way of the present revisional application, the petitioners have not been able to show that the non-application of mind so contended in respect of the order issuing process has resulted in failure of justice because of false implication of any of the petitioners. The contention of the petitioners is definitely correct that the particular phrase relating to 'enquiry being conducted under Section 202 of the Code of Criminal Procedure' is missing in the order dated 13.03.2020, however, the whole of the process is undertaken do satisfy such enquiry which has been undergone by the learned Magistrate, prior to issuance of process.

Considering the aforesaid, I do not find any grounds to interfere with the order issuing process which has been challenged by the

petitioners so far as the non-compliance of Section 202 of the Code of Criminal Procedure is concerned.

The additional contention raised by the petitioners so far as the petitioner no.3 is concerned wherein it has been contended that the cheque was signed by the petitioner no.2 and the petitioner no.3 has been implicated only because he is a Director of the Company, I am of the opinion that in view of the judgement delivered by the Hon'ble Supreme Court in ***S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan*** reported in **2022 SCC OnLine SC 1238**, the issue of vicarious liability would be a question of fact as there are no additional materials which are unimpeachable to show that the petitioner has been implicated in this case without any rhyme or reason thereby calling for this Court to invoke its jurisdiction under Section 482 of the Code of Criminal Procedure.

In view of the observations made above, I find that no case for interference has been made out in the present revisional application. Accordingly, the revisional application being **CRR 624 of 2021** is **dismissed**.

All pending connected applications, if any, are consequently disposed of.

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 supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)

dc.