IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1182 of 2016

IA No. CRAN 5 of 2017 (CRAN 4323 of 2017)

Tikkavarapu Venkattram Reddy

Vs.

M/S. Jay Shree Tea and Industries Limited

With

C.R.R. 1184 of 2016

IA No. CRAN 5 of 2017 (CRAN 4325 of 2017)

Tikkavarapu Venkattram Reddy

Vs.

M/S. Jay Shree Tea and Industries Limited

For the Petitioners :Mr. Mrityunjay Chatterjee, Adv.
Mr. R. Dutta, Adv.
Mr. Debapriya Majumder, Adv.

Heard on :14.08.2023,04.09.2023, 05.09.2023, 27.09.2023,

Judgment on : 17th October, 2023

Bibhas Ranjan De, J.

1. Both the revision applications involving identical issues are to be disposed of by this common judgement.

Facts:-

2. The complainant/company M/s. Jay Shree & Industries Limited (opposite party herein) having its registered office at 10, Camac Street, Kolkata 700017, filed a complaint against the petitioner herein along with the accused company and others before the Learned Metropolitan Magistrate, 7th Court, at Calcutta, in connection with complaint case no. C/995 of 2013 (CRR 1182 of 2016) and complaint case no. C/996 of 2013 (CRR 1184 of 2016) under Section 138/141 of the Negotiable Instruments Act, 1881 (for short N.I. Act) alleging, inter alia that the accused company namely Deccan Chronicle Holdings Limited in discharge of its alleged existing debt and liability issued an account payee cheque dated 21.08.2012 for a sum of Rs. 5,00,00,000/- (Rupees five crores in connection with CRR 1182 of 2016) bearing cheque no. 000715 and sum of Rs. 7,12,603/- (Rupees seven lac twelve thousand six hundred and three in connection with CRR 1184 of 2016)

bearing cheque no. 000878 drawn on ICICI Bank Limited Hyderabad Branch in favour of the complainant/company.

3. The complainant/ company presented the aforesaid cheques for encashment through its banker namely SBI at 24, Park Street Branch, Kolkata within the stipulated time of the said cheques but upon representation of the said cheques, they were returned dishonoured unpaid with the remarks 'Account Frozen'.

4. Thereafter, the complainant/ company sent demand notices by letters dated 27.11.2012 within the stipulated period prescribed under the NI Act and demanded payment against the dishonoured cheques within 15 days from the date of receipt of notice and further mentioned that failure to comply with the said notice would attract legal proceedings under the Provision of the NI Act. These notices were duly served and received by the accused persons including the petitioner herein. The complainant/company alleged that the accused persons had knowledge and were fully aware of the insufficient amount in its bank account in order to honor the said cheques. The complainant/company further assailed that the accused company did not make any payment and only sought time to make payment but only delayed the proceedings without any fruitful solution causing reasonable doubt in the mind of the complainant/company regarding the actual intention of the accused company to pay the amounts in discharge of their liabilities.

5. Ld. Advocate, Mr. Mrityunjay Chatterjee, appearing on behalf of the petitioner has submitted that written complaint lodged under Section 138/141 of the NI Act never disclosed the actual role of the petitioner in the issuance of alleged cheques. It is submitted that there must be an averment that accused was in charge of and responsible for the conduct of the business.

6. In support of his contention he relied on following cases:-

- ***Monaben Ketanbhai Shah and another Vs. State of Gujarat and others*** reported in ***2004 Supreme Court Cases 1875***
- ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another*** reported in ***2005 Supreme Court Cases (Cri) 1975p***
- ***N.K. Wahi Vs. Shekhar Singh and others*** reported in ***(2007) 9 Supreme Court Cases 481***

- ***National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and another*** reported in ***(2010) 3 Supreme Court Cases 330***
- ***Harshendra Kumar D. Vs. Rebatilata Koley Etc.*** reported in ***2011 (2) All India Criminal Law Reporter***
- ***Lav Jhingan Vs. State of West Bengal & anr.*** reported in ***2011 SCC onLine Cal 851***
- ***Ramrajsingh Vs. State of M.P. and anr*** reported in ***(2009) 6 Supreme Court Cases 729***
- ***Sunil Bharti Mittal Vs. Central Bureau of Investigation*** reported in ***(2015) 4 Supreme Court Cases 609***

7. I have gone through all the cases referred to on behalf of Mr. Chatterjee. It is settled that to attract the Provision Punishable under Section 138/141 of the NI Act written complaint must contain the averment as to how and in what manner accused was responsible for conduct of the company or otherwise responsible to it in regard to its functioning. It is also held by the decision of the cases referred to above that there must be a specific allegation in the complaint as to the part played by the accused in the transaction.

8. At the very outset, I would like to reproduce the Provision of Section 141 of the NI Act as follows:-

"141 Offences by companies. —

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: [22] [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.]"

9. First paragraph of the Provision casts a primary responsibility on the complainant to make specific allegation in the complaint so as to make the accused vicariously liable. The first paragraph of section 141 of the NI Act also dispenses with legal requirement for the complainant to show that accused/employee of the company was aware about each and every transaction. First proviso to (1) of Section 141 clearly spells out a liability upon the accused to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence.

10. Other proviso to (1) of Section 141 lays down no liability on a director of a company nominated by the Central or State Government.

11. (2) of Section 141 deals with the proof of facts with regard to consent or connivance of the director, manager, secretary or any other officers of the company in committing offence by the company.

12. Therefore, in view of provision of Section 141(1) and proviso thereto it appears that at the threshold of the case liability is on the complainant to make averment in the complaint regarding responsibility of the accused and accused can also furnish some sterling incontrovertible material or acceptable circumstances to substantiate the contention that alleged offence was committed without his knowledge.

13. It is needless to mention that no such sterling material has ever been submitted on behalf of the petitioner/accused. On the other hand in the written complaints in connection with both the revision applications particularly in paragraphs 2 & 3, it is averred as follows:-

In respect to CRR 1182 of 2016-

“ 2. That the accused no. 1 is a Company having its registered office at 36, Sarajini Devi Road, Secundarabad-500003 and accused no. 2 to 6 are working for gain at the office of the accused no. 1 namely Deccan Chronicle Holdings Limited and are responsible for day to day affairs of the accused no. 1.

3. That the accused persons in discharge of their existing liabilities arising including from demand promisary note, had drawn an issued cheque out of a Bank account maintained by them with ICICI Bank Limited, for a sum of Rs. 5,00,00,000/- (Rupees five crore) only to and in favour of the complainant and delivered the cheque to the complainant at its said office at 10, Camac Street, Kolkata 700017, within the jurisdiction of this Ld. Court details of which is given below…..”

In respect to CRR 1184 of 2016-

“ 2. That the accused no. 1 is a Company having its registered office at 36, Sarajini Devi Road, Secundarabad-500003 and accused no. 2 to 6 are working for gain at the office of the accused no. 1 namely Deccan Chronicle Holdings Limited and are responsible for day to day affairs of the accused no. 1

3. That the accused persons in discharge of their existing liabilities arising including from demand promisary note, had drawn an issued cheque out of a Bank account maintained by them with ICICI Bank Limited, for a sum of Rs. 7,12,603/- (Rupees seven lac twelve thousand six hundred three) only to and in favour of the complainant and delivered the cheque to the complainant at its said office at 10, Camac Street, Kolkata 700017, within the jurisdiction of this Ld. Court details of which is given below.....”

14. In fact, the actual role of the petitioner in the company, in my opinion, cannot be said to be in special knowledge of the complainant whereas role of the petitioner/accused in the company is surely within the special knowledge of the petitioner/accused himself, and that could have been substantiated by any sterling material. According to Section 141 of the NI Act, complainant is only supposed to have knowledge of the person in charge of the company as it is special knowledge of the petitioner/accused.

15. In this case, petitioner/accused could not show any sterling material that he was not really concerned with the issuance of cheque in order to persuade this Court to quash the proceeding.

16. In view of the aforesaid observation, I find that the instant revision application is liable to be dismissed.

17. The revision application being no.CRR 1182 of 2016 & 1184 of 2016 Stand dismissed.

18. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]