

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1374 of 2019

With

CRAN 2 of 2020

(Old CRAN 804 of 2020)

Ravi Modi

Vs

Shashi Kant Bubna & Anr.

For the Petitioner : Mr. Mohinoor Rahaman,
Ms. Maria Rahaman,
Mr. Imdadul Biswas.

For the Opposite Parties : None.

Hearing Concluded on : 23.11.2023

Judgment on : 01.12.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the judgment and order dated 29.03.2019 passed by the Learned Additional District & Sessions Judge Fast Track Court – I, Bichar Bhawan, Kolkata in Criminal Revision No. 145 of 2018, thereby affirming the judgment and order dated 15.09.2017 passed by the 18th Metropolitan Magistrate, Kolkata in Complaint Case No. C-3290/2014 under Section 138 of the Negotiable Instruments Act, convicting the accused/petitioner herein under Section 255(2) of the Code of Criminal Procedure and sentencing him to undergo Simple Imprisonment for 3 months and to pay a sum of Rs. 17,00,000/- (Rupees Seventeen Lakhs) as compensation to the Complainant/Respondent No. 1 herein as per Section 357(3) of Cr.P.C. within 4 months from the date of that order in default, Simple Imprisonment for four months.
2. The Opposite party no.1/Complainant filed the Complaint case alleging there in that the petitioner approached the opposite party No.1 for a loan and accordingly the complainant/opposite party No. 1 granted isolated commercial loan amounting to Rs. 15,00,000/- and an account payee cheque being No. 259869 drawn on IDBI Bank, Girish Park Branch dated 10th March, 2013 was issued in the name of the petitioner on condition that the said loan amount will be refunded by the petitioner to the opposite party No. 1 along with interest @ 9% per annum and

accordingly the petitioner issued two account payee cheques drawn on State Bank of India, Chowringhee Branch dated 20.11.2013 being No. 442590 amounting to Rs. 15,00,000/- as the principal amount and cheque No. 442591 amounting to Rs. 45,000/- as interest.

3. When the said cheque was presented it was dishonoured. Hence the case leading to the conviction of the petitioner to suffer simple Imprisonment for 3 months and to pay a sum of Rs. 17,00,000/- (Rupees seventeen lakhs) only as compensation to the Complainant/Respondent No. 1 herein as per Section 357(3) of Cr.P.C. within 4 months from the date of that order in default Simple imprisonment for four months.
4. The said judgment was challenged by the petitioner in Criminal Revision 145/2018, which was disposed of by the learned Additional District and Sessions Judge, Fast Track Court –I, Bichar Bhawan, Kolkata, vide Judgment and order dated 29.03.2019 by affirming the Judgment of conviction of the Trial Court.
5. The petitioner's Contention is that the account payee cheque bearing no. 442590 dated 10.11.2013 for Rs. 15,00,000/- and the account payee cheque bearing no. 442591 dated 10.11.2013 for Rs. 40,500/- both drawn on State Bank of India, Chowringhee Branch, Himalaya House, 38B, Chowringhee Road, Kolkata – 700071 were issued by the accused/petitioner herein **being the Director of Bhavyaa Global Limited** in the name of Fast Flow Vintrade Private Limited and the payee of the account payee cheques was the said Fast Flow Vintrade Private

Limited but the said payee of the cheques did not file the said complaint case against the accused/petitioner herein. The said complaint case was filed by one Vikashh K Agarwal c/o. M/s. Fast Flow Vintrade Private Limited.

6. **Mr. Mohinoor Rahaman, learned counsel for the petitioner** submits that the opposite party no.1 failed to issue demand notice under Section 138 of the Negotiable Instruments Act, in the name of the company who issued the alleged cheque and as such the opposite party No. 1 failed to fulfill the conditions as specify in the Negotiable Instruments Act.
7. It is further submitted that in the said petition of complaint, Bhavyaa Global Limited was not cited as an accused though the said account payee cheques were issued by the accused/petitioner Ravi Modi being the Director of said Bhavyaa Global Limited.
8. The demand notice dated 21.12.2013 (Exhibit-4) shows that no demand notice was sent to the company M/s. Bhavyaa Global Limited. The said demand notice dated 21.12.2013 was sent only to the accused/petitioner herein Ravi Modi C/o. M/s Bhavyaa Global Limited.
9. Mr. Rahaman has thus prayed for dismissal of the case.
10. **There is no representation on behalf of the opposite parties.**
11. **From the materials on record** including the Judgment of the Trial Court it is on record at page 8 of the judgment of the Trial Court that PW1 has stated as follows :-

C. Case No. 3290/14

*“.....With regard to the debts/liability is concerned, **P.W. 1 states that the accused being the Director of M/s. Bhavyaa Global Limited company had approached the complainant company and availed isolated loan of Rs. 15,00,000/- along** with interest of 9% per annum and in order to discharge his debt/liabilities he had issued cheques in question which came to be returned for want of sufficient funds. It may be noted that this material oral evidence of P.W. 1 is also supported by entries made in Ext. 7 i.e. the bank statement. So, now it is clear from the perusal of Ext.1 that the cheque in question was being issued by the accused person and therefore signature thereon belongs to him only.....”*

12. So the complainant (P.W.1) has clearly stated that the petitioner herein being the accused director of the company, M/s Bhavyaa Global Limited Company availed the loan and then issued the cheques in this case.

13. Admittedly only the petitioner who was the director of the company has been made a party in the complaint case. The company M/s Bhavyaa Global Limited is not an accused in this case.

14. Learned Counsel for the petitioner has relied upon the judgment of the Supreme Court in ***Aneeta Hada vs Godfather Travels and Tours Private Limited, (2012) 5 Supreme Court Cases 661.***

15. Section 141 N.I. Act lays down 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:

[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.”

- 16.** The Supreme Court in ***Himanshu -versus- B. Shivamurthy & Another,***
(2019) 3 SCC 797, on January 17, 2019, has laid down that:-

“In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in

error in holding that the company could now be arraigned as an accused.”

17. The Hon’ble Apex Court similarly in ***Aneeta Hada -versus- Godfather Travels And Tours Private Limited, (2012) 5 SCC 661***, has laid down that **“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.”**
18. In the present case ‘Notice’ under Section 138 of the Act of 1881 was never issued to the company.
19. The company was not made a party to the proceedings under Section 138/141 of the Act of 1881 which itself makes the proceedings non-maintainable.
20. PW 1 has stated on oath that the accused/petitioner being the Director of M/s Bhavyaa Global Ltd.....
21. **But the said company has not been made an accused in the complaint case nor was any notice served upon the company under Section 138 of the N.I. Act.**
22. The petitioner is the sole accused/opposite party in the complaint case, having signed the cheque as Director of the company and for and on its behalf.

23. Paragraph 11, 12 & 13 of the judgment of the Supreme Court in ***Himanshu vs. B. Shivamurthy & Anr. (Supra)*** has been relied upon on behalf of the petitioner, where the Court held:-

*“11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. **The complaint was lodged only against the appellant without arraigning the company as an accused.***

12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, every person, who at the time when the offence was committed was in charge of or 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.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.”

24. **The facts in the present case** is very similar to the case, in ***Himanshu vs. B. Shivamurthy & Anr. (Supra)***.

25. **In the present case:-**

- a) The company has not been made an accused nor was any notice served upon the company.

- b) The petitioner has been made an accused as the Director of the company, who signed and issued the cheque for and on behalf of the company.
- 26.** Therefore, in the absence of the company being arraigned as an accused, a complaint against the petitioner is not maintainable ***Himanshu vs. B. Shivamurthy & Anr. (Supra).***
- 27. CRR 1374 of 2019 is thus allowed.**
- 28.** The judgment judgment and order dated 29.03.2019 passed by the Learned Additional District & Sessions Judge Fast Track Court – I, Bichar Bhawan, Kolkata in Criminal Revision No. 145 of 2018, thereby affirming the judgment and order dated 15.09.2017 passed by the 18th Metropolitan Magistrate, Kolkata in Complaint Case No. C-3290/2014 under Section 138 of the Negotiable Instruments Act, convicting the accused/petitioner herein under Section 255(2) of the Code of Criminal Procedure and sentencing him to undergo Simple Imprisonment for 3 months and to pay a sum of Rs. 17,00,000/- (Rupees Seventeen Lakhs) as compensation to the Complainant/Respondent No. 1 herein as per Section 357(3) of Cr.P.C. within 4 months from the date of that order in default, Simple Imprisonment for four months, **are hereby set aside.**
- 29.** The petitioner/accused is acquitted of offence punishable under Section 138/141 N.I. Act and discharged from his bail bonds.
- 30.** All connected applications, if any, stands disposed of.
- 31.** Interim order, if any, stands vacated.

- 32.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 33.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)