

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIOANL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR/3955/2022

Pankaj Saraf & Anr.

Vs.

The State of West Bengal & Anr.

With

CRR/3965/2022

Pankaj Saraf & Anr.

Vs.

The State of West Bengal & Anr.

With

CRR/3956/2022

Pankaj Saraf & Anr.

Vs.

The State of West Bengal & Anr.

With

CRR/3957/2022

Pankaj Saraf & Anr.

Vs.

The State of West Bengal & Anr.

With

CRR/3958/2022

Pankaj Saraf & Anr.

Vs.

The State of West Bengal & Anr.

With

CRR/3960/2022

Pankaj Saraf & Anr.

Vs. The State of West Bengal & Anr.

With

CRR/3961/2022

Pankaj Saraf & Anr.

Vs.

The State of West Bengal & Anr.

With

CRR/3962/2022

Pankaj Saraf & Anr.

Vs.

The State of West Bengal & Anr.

With
CRR/3963/2022
Pankaj Saraf & Anr.
Vs.
The State of West Bengal & Anr.
With
CRR/3964/2022
Pankaj Saraf & Anr.
Vs.
The State of West Bengal & Anr.
With
CRR/2639/2022
In IA No: CRAN/1/2022, CRAN/2/2023
Pankaj Saraf & Anr.
Vs.
The State of West Bengal & Anr.

For the Petitioner: Mr. Dipanjan Chatterjee, Adv.,
 Mr. Ashok Bhowmik, Adv.,
 Ms. Richa Pramanik Adv.,
 Mr. Sourodeep Singha, Adv.

For the O.P No.2: Mr. Debajyoti Deb, Adv.,
 Mr. Shyamal Mondal, Adv.,
 Ms. Somdyuti Parekh, Adv.,
 Ms. Sanjana Maitra, Adv.

Heard on: 29.03.2023 & 12.04.2023.

Judgment on: 20.04.2023.

BIBEK CHAUDHURI, J. : –

1. Since the identical question of facts and law are involved in the above mentioned criminal revisions this Court is disposing of the said criminal revisions by a composite judgment.

2. In CRR 3958 of 2022 the petitioners have prayed for quashing of a complaint registered as CS Case No.0002977 of 2015 pending before the learned Metropolitan Magistrate, 14th Court at Calcutta under Section 138 read with Section 141 of the Negotiable Instruments Act.

3. It is alleged by the petitioners that they retired from the post of Directors of Diamond Shipping Company Ltd by submitting their resignations before the Ministry of Corporate Affairs on 10th June, 2014. On 21st August, 2014 the a cheque was drawn on behalf of Diamond Shipping Company Ltd in favour of opposite party No.2 for a total sum of Rs.95,09,451/-. The said cheque was deposited by the opposite party No.2 in his bank for encashment but the cheque was dishonoured on 8th November, 2014 with the remarks "Account blocked situation covered". Subsequently, the opposite party No.2 issued a notice upon M/s Diamond Shipping Company Ltd demanding payment of the cheque amount within the statutory period of time. However, the company failed to pay the said sum and finally the opposite party No.2 lodged a complaint against the company and the present petitioners.

4. It is contended by the petitioners that the cheques were issued on 28th August, 2014. While the petitioners retired from the post of Directors of the said company with effect from 10th June, 2014. By an order dated 2nd September, 2014 the Commissioner of Customs (Port), Government of India requested the company to freeze the bank account No.018705008342 of the said company.

5. It is the specific case of the petitioners that the petitioners were not the Directors of the complainant company on the date on which the cheques were issued. In support of his contention, Mr. Chatterjee, learned Advocate for the petitioners refers to the decision of the Hon'ble Supreme Court in **Harshendra Kumar D. vs. Rebatilata Koley & Ors.** reported in

(2011) 3 SCC 351. In the said decision it is held by the Hon'ble Supreme Court that it is fairly well settled now that while exercising inherent jurisdiction under Section 482 or the revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents – which are beyond suspicion or doubt – placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage. Thus, the Hon'ble Supreme Court held that the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the company. Since the appellant resigned from the post of Directorship before issuance of cheque, and his resignation was accepted, the erstwhile director cannot be prosecuted in a complaint for dishonor of cheques. If the complaint is allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of the process of the court.

6. The next limb of argument made on behalf of the petitioners is that the bank account of the company was frozen by the Commissioner of Customs (Port), Government of India with effect from 2nd September,

2014. Therefore, freezing of bank account of the petitioner had the effect of disabling the company from operating or maintaining the said account. The petitioners could not exercise their rights either to deposit into or withdraw from the said account. It is not the case of the complainant that the cheques in question were dishonoured due to insufficient fund or those cheques exceeded the arrangement made in the bank account. The company was not able to operate the bank account as it was frozen by a government authority, namely the Commissioner of Customs (Port), Government of India. Under such circumstances, the complainant company cannot be held to be liable for dishonor of cheque within the meaning of Section 138 of the Negotiable Instruments Act in support of his contention he refers to a decision of Delhi High Court in **Vijay Chaudhary vs. Gyan Chand Jain** reported in **151 (2008) Delhi Law Times 237**.

7. The learned Advocate for the petitioners also refers to the decision of this Court in **Saroj Kumar Jhunjunwala vs. The State of West Bengal & Anr.** reported in **(2007) 1 C Cr. LR (Cal) 793**, wherein a Coordinate Bench of this Court held that a director who resigned from the post of Directorship prior to the issuance of cheque by the company, is not responsible for the dishonourment of the cheques in question and the proceeding against such director being not maintainable is liable to be quashed.

8. Learned Advocate for the opposite party, on the other hand submits that even if the directors of the company resigned before issuance of

cheques and the account of the accused company was freezed by the order of a statutory authority or on account of the winding-up proceedings as against the accused company, but the accused company having issued the cheques for the subsisting liability is bound to see that the cheques are honoured at any cost. The freezing of the account was not on account of the act of the complainant, but it was on account of the act of the accused. The accused company, therefore cannot escape from the criminal liability on the ground that the cheques were returned dishonoured only on account of the freezing of the accounts of the accused.

9. It is further submitted by learned Advocate for the opposite party that the Negotiable Instruments Act is a Special Act which overrides the provisions of the Companies Act, the legal liability contemplated under Section 446 of the Companies Act does not synchronise with the criminal proceedings under the Negotiable Instruments Act and the personal criminal liability and not the civil liability of the company is enforced under Section 138 read with Section 142 of the Negotiable Instruments Act. Therefore, the company and his directors cannot shirk their criminal liability on the ground that the company was already wound up and the Official Liquidator had taken charge of the affairs of the company. In support of his contention the learned Advocate for the opposite party refers to a decision of Madras High Court in the case of **Counter Point Advt. P. Ltd vs. Harita Finance Ltd.** reported in **2006 (2) Crimes 368.**

10. The learned Advocate for the opposite party next refers to another decision of this Court in the case of **Fateh Chand Bhansali vs. Hindusthan Development Corporation Limited** reported in **(2005) 2 CHN 454**. In the aforesaid judgment a Coordinate Bench of this Court held that the order of the Reserve Bank of India freezing a bank account of the accused company is not at all a ground to quash the complaint against the petitioners. Order of Reserve Bank of India cannot operate as a ban to lodge criminal proceeding against petitioners for alleged offence under Section 138 of the NI Act. Moreover, it would be a question of fact which can be decided on the basis of evidence in the Trial Court whether default on the part of accused No. 1 company and its Directors in paying the amount of the dishonoured cheque to the holder of the cheque had occurred because of overriding supervening event namely, the Order of the Reserve Bank of India restraining the petitioner company and its Directors from making payment by disbursing funds or disposing of its properties. This point can be decided on the basis of cogent oral and documentary evidence at the time of trial. Therefore, application filed for winding-up of the company cannot save the company and its directors from penal liability under Section 138 of the N.I Act.

11. Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record I like to record at the outset that Diamond Shipping Limited has not come forward seeking encashment of the criminal proceeding instituted against it. The petitioners were erstwhile directors of the company who retired from the post of directors

of the said company with effect from 10th June, 2014. Therefore, the factual circumstance is similar to the facts and circumstance of **Harshendra Kumar D. (supra)** wherein the Hon'ble Supreme Court was pleased to hold that on the date the offence was committed under Section 138 of the N.I Act by the company the appellant was not the director; he had nothing to do with the affairs of the company. Thus, it was held by the Hon'ble Supreme Court that in such view of the matter, if the criminal complaints are alleged to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of the process of the court.

12. In the instant case similar is the situation. The petitioners were not directors of the company on the date when the cheques were issued. It is not the case of the opposite party No.2/complainant that they were the signatories of the cheques. It is also pertinent to note that in the above mentioned decision the Hon'ble Supreme Court considered both the decisions of this Court in **Fateh Chand Bhansali** and **Saroj Kumar Jhunjhunwala** and the Hon'ble Supreme Court held that the directors who retired from the post before issuance of cheques cannot be held liable under Section 138 of the N.I Act.

13. For the reasons stated above, I do not have any other alternative but to quash the criminal proceedings against the present petitioners.

14. The instant revision is, accordingly, allowed on contest.

(Bibek Chaudhuri, J.)