

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 4318 of 2022

**Mithu Biswas and Others
Vs.
Khandelwal Jutex (P) Ltd. and others**

Mr. Q.A.M. Firoz
Mr. Arun Shaw
..for the petitioner

Item No.11

Heard & Judgment on: 19.04.2023

Bibek Chaudhuri, J.

The petitioners have approached this Court praying for quashing of a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act being C.S. No. 31654 of 2019 pending before the learned Metropolitan Magistrate, 14th Court, Calcutta on two fold grounds.

- (i) No notice was served upon the petitioners.
- (ii) The petitioners are not the Executive Directors of the Company. They are non-executive Directors.

It is found from the impugned order that the learned Magistrate rejected the application filed on behalf of the petitioners in view of the decisions of the Hon'ble Supreme Court in the case of Adalat Prasad.

Learned Magistrate did not consider as to whether notice was served upon the petitioners or not. The learned Magistrate has also failed to consider the subsequent decisions of the Hon'ble Supreme Court where it has been stated that non-executive members of a company who do not have any control over the day to day affairs of business cannot be prosecuted under Section 138 of the Negotiable Instruments Act.

For such purpose I do not think it proper to admit the instant revision for quashing. The petitioners are at liberty to agitate this point at the time of examination of the accused persons under Section 251 of the Code of Criminal Procedure. The learned Magistrate shall consider the allegations as to whether notice was served upon the petitioners which is the principal condition of filing complaint under Section 138 of the N.I. Act and secondly, whether the petitioners were engaged in any way in the business affairs of the company and they

discharge the same day to day function of the company and for their acts they are liable to the company.

With the above direction, the instant revision is disposed of.

(Bibek Chaudhuri, J.)