IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(Circuit Bench at Jalpaiguri)

PRESENT: **THE HON'BLE JUSTICE SUGATO MAJUMDAR**

CRA 13 of 2019

Nipendranath Sarkar
Vs.
The State of West Bengal & Ors.

For the Appellant	:	Mr. Anirban Banerjee
For the State	:	Mr. Aditi Shankar Chakraborty Mr. Sourav Ganguly
Hearing concluded on	:	21.08.2023
Judgment on	:	**23.08.2023**

Sugato Majumdar, J:-

The instant appeal is preferred against the judgment and order dated 07.012.2018 passed by the Learned Judicial Magistrate, 1st Court, Jalpaiguri in connection with C.R. Case No. 316 of 2015 acquitting the accused under Section 255(1) of the Code of Criminal Procedure as the accused person was found 'not guilty' of the offence punishable under Section 138 of the Negotiable Instrument Act.

The accused persons are partner of the firm named "Om Fabrication." The said firm got a contract of civil construction under another concern "Bhutan Food Products Pvt. Ltd" which was in turn assigned to the Appellant/complainant by the respondent no. 2 and 3 on the basis of sub-contract. In course of business, two cheques were issued which were dishonored. Proceeding under Section 138 was drawn up against the present respondent no. 2 and 3. The Trial Court rejected and dismissed the application and acquitted the respondent no. 2 and 3 on the ground that partnership firm was not made a party.

On being aggrieved and dissatisfied the instant appeal is preferred.

The Learned Counsel for the revision petitioner argued that the absence of the partnership firm is not fatal to the prosecution. The Trial Court failed to apply the correct principle of law and committed an error in passing the impugned judgment and acquitting the respondent. The Learned Counsel relied upon ***Rallis India Limited Vs. Boduru Vidya Bhushan And Others*** **[*(2011) 13 SCC 88].***

None appears for the respondent.

Section 141 of the Negotiable Instrument Act, 1881 states:

> *(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.]

In ***Anil Hada Vs. Indian Acrylic Ltd., [(2000) 1 SCC 1*** **]** the Supreme Court of India observed that the phrase "as well as" used in sub-section (1) of Section 141 of the Negotiable Instrument Act, 1881 would embroil the persons mentioned therein within the tentacles of the offence on par of the offending company. Therefore, when a company or firm is the drawee of the cheque, such company or firm is the principal offender and the fiction created by the legislature. By way of fiction the offence which is attributed to the juristic persons is extended to the individuals to be liable to the prosecuted and punished. In ***Monaben Ketanbhai Shah Vs. State of Gujarat*** [***(2004) 7 SCC 15]*** it was observed by the Supreme Court of India that Section 141 relates to offences by the company it provides that if person committing an offence under Section 138 is a company, every person who at the time of 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.

The proposition of law is very clear. The principal offender is the company/the firm which extends to the human beings responsible for running the administration. The words *"as well as"* used in the first clause bear meaning to the extent that the juristic person is the principal offender; liability extends along with to the human agencies, directors or partners, as the case may be. The liability of such juristic person extends to the directors of partners. Therefore, the principal offender must be the company or the firm along with the human agencies. Both must be prosecuted.

The Trial Court committed no error and passing the impugned judgment and acquitting the respondents in this case. Therefore, the impugned judgment demands no interference and stands upheld.

The instant appeal stands disposed of along with pending applications, if any.

(Sugato Majumdar, J.)