

01.05.2024

Sl. No.: 21

Court No.30

BM

CRR 733 of 2022

Gautam Mukherjee

Vs.

Kamal Kumar Dutta

Mr. Anirban Dutta

Mr. R. L. Mitra

Mr. Ayan Mondal

... for the petitioner

Mr. Sabyasachi Mukherjee

Mr. Debarati Choudhury

Mr. Poulam Dey

Mr. Bibek Dey

Mr. Mukesh Khanna

Mr. Mrinmay Nandy

Mr. Syed Neaz Ahmed

... for the opposite party

- 1.** The present revisional application has been preferred praying for quashing of the proceeding being Complaint Case No.100 of 2020 pending before the Court of the learned Judicial Magistrate, 3rd Court at Barrackpore under Section 138 of the Negotiable Instruments Act, 1881.
- 2.** From materials on record, it appears that admittedly the cheque in the present case has been issued on behalf of the Company M/s Fusion Engineering Product Pvt. Ltd.
- 3.** On perusal of the petition of complaint, it appears that the company has not been made a party in the present case.
- 4.** The petitioner herein has been implicated as an accused in the present case, as Managing Director of the said Company. The other two accuseds in the complaint case before the trial court have also been implicated as the Directors of the said Company.

5. The proceeding in the present case is under Section 138 of the Negotiable Instruments Act.
6. The Hon'ble Supreme Court in ***Himanshu vs. B. Shivamurthy & Anr. (2019) 3 SCC 797, decided on January 17, 2019,*** has held as follows:-

“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.

16. In our view, having regard to the intent of the order which was passed by this Court on 28-11-2008 [Himanshu v. B. Shivamurthy, 2008 SCC OnLine SC 24] , it would be appropriate and proper if the amount deposited in this Court, together with accrued interest, is paid over to the respondent complainant. The Registry shall, accordingly, issue a communication to the respondent intimating a copy of the present order (since the respondent has not appeared despite service of notice). The amount shall be disbursed to the respondent against proof of identity.”

7. Thus, the company not being made a party in this case, the proceedings against all the accused persons including the petitioner herein is not maintainable.
8. **CRR 733 of 2022 is thus allowed.**
9. Accordingly, the proceeding being Complaint Case No.100 of 2020 pending before the Court of the learned Judicial

Magistrate, 3rd Court at Barrackpore under Section 138 of the Negotiable Instruments Act, 1881, **is quashed in respect of all the accused persons including the petitioner herein.**

- 10.** All applications connected thereto stand disposed of.
- 11.** Interim order, if any, stands vacated.
- 12.** Let a copy of the order be sent to the learned trial court for compliance.
- 13.** Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)