03-01-2024
Subha
Item no. 51
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 2483 of 2023
CRAN 1 of 2023

Masud Tarif
-versus-
Urpan Trading Private Limited

Mr. Sompriya Chowdhury
Mr. Md. Zohaib Rauf
.....for the petitioner.

Mr. Dipanjan Dutt
Mr. Surojit Saha
...for the State.

Mr. Chowdhury, learned advocate appearing on behalf of the petitioner submits that the petitioner is aggrieved by the order passed in Misc. Execution Case No. 17 of 2023 by the learned Metropolitan Magistrate, 14th court, Calcutta arising out of CN 839/2018 under Section 138 read with Section 141 of the N. I. Act.

According to Mr. Chowdhury, learned advocate for the petitioner M/s Amrit Feeds Pvt. Ltd., happened to be the drawer of the cheque and so far as the present petitioner is concerned, he was an executive who was appointed as Director and cannot be saddled with liability as the phrase 'drawer' used in S.143A of the N. I. Act is in a different parlance.

Learned advocate distinguishes the term 'drawer' as used in Section 143A of the N. I. Act and Section 141 of the N. I. Act and submits that for the purpose of Section 143A of the N. I Act, the individual who has been made vicariously liable cannot be termed to be a drawer. To that extent, the learned Advocate has relied upon the judgement of *Lyka Labs Limited & Anr. v. State of Maharashtra & Anr.* reported in 2023 SCC onLine Bom 560. Emphasis has been laid on paragraph 52 which is set out as follows :-

> *52."For the reasons stated above questions framed above are answered as below:-*
>
> *i) The signatory of the cheque, authorized by the "Company", is not the drawer in terms of section 143A of the NI Act and cannot be directed to pay interim compensation under Section 143A.*
>
> *ii) In an appeal under Section 148 of the NI Act filed by persons* other than "drawer" against the conviction *under Section 138 of the NI Act, a deposit of a minimum sum of 20% of the fine or compensation is not necessary.*
>
> *However, in an appeal filed by persons other than "drawer" against the conviction under Section 138 of the NI Act such power to direct deposit of compensation is available with the Appellate Court while suspending sentence under Section 389 of the Code of Criminal Procedure".*

Learned advocate submits that M/s. Amrit Feeds Pvt. Ltd is at present under the Corporate Insolvency Resolution Process of the complainant's claim has been admitted in the said process.

It is submitted on behalf of the petitioner that under the given set of circumstances where the company is responsible for payment, the same onus cannot be shifted or foisted on an executive who was appointed as a Director and who subsequently has resigned from the company.

When a company goes into insolvency definitely there are difficulties faced by the individuals who are vicariously liable, but the rule of the precedents do not deter continuation of trial or the sentencing process so far as the persons responsible for business of the company referred to in Section 141 of the N. I Act is concerned.

Mr. Dutt, learned advocate appearing on behalf of the private opposite party has referred to the statement of objects and reasons for the purpose of which Section 143A of the N. I Act was incorporated in the existing legislation. The relevant part of which is set out below :-

> *"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions."*

It has been pointed out that presently three individuals are facing the trial and execution process has been initiated against the three individuals also. The provisions of Section 143A as has been referred to above was incorporated or inserted for the purpose of expediting the progress of the trial under the provisions of the N. I. Act and the present case is one wherein the case was initiated in the year 2018 and till date the evidence is in progress.

The learned Magistrate in the year 2020 invoked the jurisdiction under Section 143A of the N. I Act and by way of interim compensation awarded a sum of Rs.1,80,000/-. Having regard that there may be scarcity of funds amongst the individuals because of the crisis which has subsequently surfaced for the company going into insolvency, I direct that the learned Magistrate will not insist on a single individual to pay interim compensation of Rs.1,80,000/- but would be at liberty to segregate the same into three parts.

Under such circumstances, if the present petitioner deposits a sum of Rs.60,000/-, the warrant of arrest or any harsher process of law so issued against the present petitioner should be recalled, immediately on deposit of the same.

With the aforesaid observations, the revisional application being CRR 2483 of 2023 along with CRAN 1 of 2023 is disposed of.

Pending applications, if any, are consequently hereby disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]