June 25, 2024
137 ARDR

CRR 4047 of 2023

Raj Chetri @ Raj Chhetri
Vs.
Jhuma Shikdar

Adv. Debapratim Guha,
Adv. Anchita Sarkar,
... for the petitioner.

Affidavit of service filed on behalf of the petitioner is taken on record.

None appears for the opposite party despite service.

The petitioner seeks quashing of the complaint case being C-17071/2023 under Section 138 of the Negotiable Instruments Act, 1881 pending before the learned Metropolitan Magistrate, 19th Court, Calcutta primarily on the ground that the allegation made out in the complaint is against one Minakshi Kumari who is not connected/associated with the petitioner in any manner.

It appears from the complaint lodged under Section 138 of the Negotiable Instruments Act that the entire allegation of the opposite party is against one Minakshi Kumari who purportedly took loan of Rs.8 lakhs from the opposite party for a short period of time without any interest thereon. Upon several requests made by the opposite party for repayment of such amount, Minakshi Kumari issued a cheque of Rs.8 lakhs drawn on Kotak Mahindra Bank on 19th December, 2022. The said cheque was dishonoured with the remarks "payment stopped by drawer", such information being received by the opposite party through her banker on 21st January, 2023.

There is no whisper within the four corners of the complaint with regard to involvement of the present petitioner in the alleged offence.

Placing reliance of the authorities in Jugesh Sehgal vs. Shamsher Singh Gogi reported in (2009) 14 SCC 683 and Aparna A. Shah vs. Sheth Developers Pvt. Ltd. Reported in (2013) 8 SCC 71, learned counsel for the petitioner has drawn the attention of the Court to the settled law with regard to the ingredients under Section 138 of the Negotiable Instruments Act. Such ingredients are set out for the purpose of adjudication of the matter.

> "(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;
>
> (ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;
>
> (iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;
>
> (iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from the account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice."

In the case in hand, it is not in dispute that the cheque in question was issued and signed by Minakshi Kumari and none of the ingredients of offence under Section 138 of the Negotiable Instruments Act are fulfilled qua the petitioner.

In view of the above, this Court is inclined to hold that the proceeding being C-17071 of 2023 pending before the learned Metropolitan Magistrate, 19th Court, Calcutta qua the petitioner be quashed.

However, the proceeding shall continue in respect of other accused.

It is pertinent to mention here that the 3rd accused Lakshman Chetri, father of the petitioner had expired in the meantime as submitted by the learned counsel for the petitioner.

With the aforesaid observations and directions the application, being CRR 4047 of 2023 is disposed of.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)