

In the matter of:- Abdus Salam & Anr. ...petitioners

Mr. Pratip Mukherjee,
Mr. Binod Kumar Mallick.
...for the petitioners.

Mr. Ayan Chakraborty,
Ms. Sohini Mukherjee.
...for the OP No.2.

Learned counsel appearing on behalf of the petitioners submits that a co-accused namely Sams Afroz had borrowed some money from the complainant/opposite party. In the agreement, the present petitioners were guarantors. The cheque in question that was issued for repayment was issued solely by the co-accused Sams Afroz. It was dishonoured and the complainant mischievously instituted a case for dishonour of cheque under the Negotiable Instruments Act against all the three. No prima facie case is made out against the present petitioners as would be evident from a plain reading of the petition of complaint and the initial depositions.

Learned counsel appearing on behalf of the complainant opposes the application and submits that the proceeding is maintainable even against the present petitioner.

There is no provision under the Negotiable Instruments Act to arraign an outsider as a co-accused under Section 138 of the Negotiable Instruments Act read with Section 141 when the cheque is issued by an individual in an independent capacity and the present petitioners are not the signatories.

In view of the above, the impugned proceeding being CS/12598/2023 pending before the learned 18th Metropolitan Magistrate is quashed so far as the present petitioners are concerned.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)