17.
07-10-2026
(ct. no.34)
debajyoti

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 3838 of 2012
+
IA NO:CRAN/4/2014 (Old No:CRAN/1957/2014)
+
CRAN/7/2016 (Old No:CRAN/2330/2016)

Mrs. Rekha Malhotra & Anr.
Vs.
The State of West Bengal & Anr.

Mr. Anirban Dutta, Adv.,
Mr. Ayan Mondal, Adv.
... For the Petitioners.

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the entire proceeding being Complaint Case No.C-26920 of 2011 pending before the learned 13th Metropolitan Magistrate, Calcutta, under Section 138 read with Section 141 of the Negotiable Instruments Act.

2. The present petitioners are the Directors of M/s. Sumoson Exports Private Limited and a business relations was there between the petitioners' company and the company of the opposite party no.2. The petitioners have been arraigned in a case filed under Section 138 read with Section 141 of the Negotiable Instruments Act before the Chief Metropolitan Magistrate, Calcutta alleging that the present petitioners in discharge of their existing debt and liability in respect of the bills discounting facilities and towards part payment issued Account Payee Cheque No.221053 dated March 15, 2011 for rupees 5 lakh drawn on State Bank of India which was deposited with the complainant's banker, ICICI Bank, for encashment. But it was returned dishonored with remark "other reason by memo dated 10-09-2011".

3. The said case was transferred to the learned 13th Metropolitan Magistrate, Calcutta for disposal and the learned Magistrate on the basis of such complaint, took cognizance on February 14, 2012 and date was fixed on December 28, 2011 for solemn affirmation and relying on the above referred document issued summon against the present petitioners.

4. After receiving the said summons, the petitioner filed this revisional application before this Court for quashing of the said proceeding.

5. The specific case of the petitioners as placed before this Court by the learned advocate is that the demand notice dated September 28, 2011 was sent to the petitioners at their office address, but returned with the remark "B/C intimation" is a false statement. The complaint is barred under limitation as the notice was allegedly served in the month of September 2011, but the case was filed in November, 2011, that is, almost after two months elapsed from the period of receiving intimation. It is further submitted before this Court that the petitioner no.1 had resigned from the company since March 02, 2010 and is brought under notice of the Registrar by way of declaration under Form 32. In addition by filing an application under Sections 433/434/439 of the Companies Act, 1956 with a prayer for winding up of the company of the accused, namely, Ms. Sumoson Exports Private Limited and the matter was taken up for hearing and vide order dated August 30, 2011, direction was given to wind up the said company and an official liquidator was appointed to facilitate such recovery proceeding. It is further submitted that the cheque was placed for encashment after passing of such order, that is, September 10, 2011and in this regard, several complaints were lodged against the present Directors and in each of the cases the proceedings have been quashed by the learned coordinate Benches mostly on the ground

that the company has been wound up and the Official Liquidator has been appointed to facilitate the recovery proceeding and, therefore, this complaint is no longer maintainable.

6. In this case, no appears to represent the opposite parties. Affidavit-of-Service filed be taken on record. From the Affidavit-of-Service, it reflects that the service has been effected. The matter is pending since 2012. Therefore, the revisional application is heard in absentia against the opposite parties.

7. On perusal of the decision as relied upon by the learned advocate for the petitioners in CRR 1667 of 2012 passed by the learned coordinate Bench on December 22, 2025, it appears that the complaint was lodged against the present two petitioners along with the other persons who are the Directors and a complaint case was filed before the learned Additional Chief Judicial Magistrate, Calcutta in the month of November, 2011 under Section 138 of the Negotiable Instruments Act. The same fact was placed before the learned coordinate Bench that the order passed for winding up the company and the Official Liquidator has been appointed in order to facilitate the recovery proceedings. That apart, the present petitioner no.1 had resigned on March 02, 2010 which has been disclosed in Form No.32 and her resignation was accepted. It was observed by the learned coordinate Bench after taking into consideration the various judicial pronouncements that the Directors should be in charge or responsible for the conduct of the business of the company at the relevant point of time when the alleged offences have been committed, it was the bounden duty of the complainant to describe the mode and manner in which the directors exercised or discharged their respective duties and responsibilities of the day-to-day conduct of the business of the company. Accordingly, the proceeding was quashed.

8. Similarly, in the decision passed by the learned coordinate Bench and relied upon by the learned counsel for the petitioners being CRR 1666 of 2012 delivered on July 16, 2024, the entire proceeding filed under Section 138 of the Negotiable Instruments Act was quashed on the same premises.

9. In view of the above facts and circumstances and the law laid down in this regard and further considering that no specific overt act can be found against the present petitioners, who were the Directors, further the company went under liquidation and an Official Liquidator was appointed coupled with the fact that the petitioner no.1 resigned, this Court is also of the view that the present proceeding is no longer maintainable against the present petitioners. Hence, the entire proceedings pending before the learned 13th Metropolitan Magistrate, Calcutta, are hereby quashed.

10. The revisional application stands allowed. The connected applications are, accordingly, disposed of.

11. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

12. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]