

Calcutta High Court

HON'BLE JUDGE(S): TIRTHANKAR GHOSH , J

SIGNET MEDIA SERVICE PRIVATE LIMITED V. DIBYENDU SEKHAR LAHIRI

C.R.R - 768 of 2021, decided on 05/12/2022

Negotiable Instruments Act (26 of 1881) , S.138, S.141— Criminal P.C. (2 of 1974) , S.482— Cheque dishonour - Quashing of proceedings - Signatory of cheque cannot escape liability of facing prosecution u/S. 138 - Proceedings against two accused persons who were authorised signatories on behalf company, not liable to be quashed - However fact that third accused was responsible for day to day business of company, not established - Proceedings against said accused, quashed.

(Para 5, 6)

Case Referred :

Chronological Paras

(2014) 13 Supreme Court Cases 751

Para No.(3)

AIR 2006 SC 3086 : 2006 CRI L. J. 4602 (SC) : 2006 AIR SCW 4582

Para No.(3)

Name of Advocates

Subhabrata Datta, Ms. Debjani Roy Choudhury, Aranya Saha for Petitioner;
Sandipan Ganguly, Sr. Adv. , Dipanjan Dutt, tanmoy Roy for Respondent.

1. ORDER:- Learned advocate appearing for the petitioners challenges the continuance of the proceedings relating to Complaint Case No. 13552 of 2020 as also the orders passed therein by the learned Chief Metropolitan Magistrate, Calcutta and the learned Metropolitan Magistrate, 14 Court, Calcutta. In course of hearing of the proceedings, there was exchange of affidavits.

2. Learned advocate appearing for the petitioners submitted that the allegations made in the petition of complaint under Sections 138/141 of the Negotiable Instruments Act so far as Signet Media Services Pvt Ltd. (accused No.1), Mr. Anjan Das (accused No.2) and Mrs. Moumita Das (accused No.3) are concerned, no case has been made out against them as the complainant has failed to comply with the requisite averments/allegations in the complaint. It has been pointed out by drawing the attention of the Court to paragraph 2 of the complaint that the accused nos. 2 and 3 are Directors of the Company and were running their business. The requisite allegations that they were responsible for business of the company and were in charge of business of the company when the cheque was dishonoured and the cause of action arose is lacking in the complaint and the learned Magistrate without considering the same, mechanically summoned them to face the trial under Sections 138/141 of the Negotiable Instruments Act.

3. The learned advocate for the petitioners relied upon the following decisions of the Hon'ble Supreme Court.

(i) In the case of Sabitha Ramamurthy and another Vs. R.B.S. Channabasavaradhya reported in (2006) 10 Supreme Court Cases 581 : (AIR 2006 SC 3086) and

(ii) In the case of Mannalal Chamaria and Anr. Vs. State of West Bengal and Anr.

reported in(2014) 13 Supreme Court Cases 571 : (2014 CRI L. J. 2160 (SC)).

4. Mr. Ganguly, learned senior advocate appearing for the complainant/opposite party, on the other hand, submitted that so far as the allegations in the petition of complaint are concerned, the same must be read along with the documents relied upon by the complainant at the time of examination under Section 145 of the Negotiable Instruments Act/Section 200 of the Code of Criminal Procedure to arrive at a conclusion as to whether the accused nos. 2 and 3 are responsible for the day-to-day business of the company or at the relevant time, offence was committed or the cause of action arose. Learned senior advocate has also drawn the attention of the Court to the affidavit-in- opposition wherein he has referred to Company Master Data sheet wherefrom it would reflect thatthe accused nos. 2 and 3 happen to be authorised signatories on behalf of the company.

5. I have considered the submissions advanced by the learned advocate appearing for the accused/petitioners as also the learned advocate appearing for the complainant/opposite party. So far as the cheque is concerned, no issue has been raised regarding demand notice or the dishonor of the said cheque and it has been admitted that the accused No.2 viz. Anjan Das allegedly signed the cheque. Having considered the series of judgements wherein the responsibility of the Directors were segregated for the purposes of implicating them in cases under Section 138 of the Negotiable Instruments Act, I am of the opinion that the signatory of a cheque cannot escape the liability of facing a prosecution under Section 138 of the Negotiable Instruments Act. Accordingly, the proceedings so far as the petitioner nos. 1 and 2 (accused nos. 1 and 2 in the petition of complaint) are concerned, the same would continue. Their prayer for quashing is refused by this Court.

6. So far as petitioner No.3, Moumita Das is concerned, although the aforesaid plea was taken up by Mr. Ganguly, learned senior advocate for the complainant, but no document could be placed before this Court to show that the said document i.e. Company Master Data was placed at the stage of Section 145 of the Negotiable Instruments Act/Section 200 of the Code of Criminal Procedure before the learned Magistrate so that the learned Magistrate had the occasion to go through the document and take a decision that the accused No.3 was responsible for the business of the company. That being not so, I am of the opinion that at this stage, continuance of the proceeding and the process issued against the accused No.3 is bad in law. As such, the proceeding so far as the accused No.3, Moumita Das is concerned, the same is quashed at this stage subject to evidence being brought on record when the learned Magistrate would be at liberty to exercise his option under Section 319 of the Code of Criminal Procedure. Thus, the prayer of the petitioner No.3 is allowed, the proceeding against her is quashed.

7. So far as the petitioner Nos.1 and 2 are concerned, their prayer for quashing is refused, proceedings against them would continue before the learned Metropolitan Magistrate, 14th Court, Calcutta.

8. With the aforesaid observations, the revisional application being CRR 768 of 2021 is disposed of.

9. All pending connected applications, if any, are consequently disposed of.

10. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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

Order Accordingly