

CRIMINAL REVISION

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 4366 of 2009

Judgment On: 31-03-2010.

ABM Technocrat Private Limited

versus

Reflect Advertising & Anr.

POINTS:

QUASHING-Question of legally enforceable debt or liability is a question of fact-Company, whether can be prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act without the aid of Section 141- Initial deposition whether required to be recorded in presence of an accused - Unless the summons is issued whether the accused has right to participate in a criminal proceeding -Negotiable Instruments Act, 1881 Ss.138, 141

FACTS:

The petitioner, a company incorporated under the Companies Act, 1956, has moved this Court for quashing of its prosecution under Section 138 of the Negotiable Instruments Act on the grounds that the company has sought to be prosecuted under Section 138 of the N.I. Act without the aid of Section 141 of the said Act, the evidence was recorded behind the back of the petitioner and that there is no legally enforceable debt or liability.

HELD:

The contention of the petitioner that no company can be prosecuted for an offence punishable under Section 138 of the N.I. Act without the aid of Section 141 of the said Act is completely misconceived, absurd and without any substance. Section 141 of the Negotiable Instruments Act, has nothing to do with the prosecution of a company under Section 138 of the N.I. Act. In this case the recording of evidence has not yet been commenced as such question of recording the same behind the back of the petitioner does not at all arise. In any event, according to the scheme of the Code of Criminal Procedure, no initial deposition is required to be recorded in presence of an accused, and unless the summons is issued the accused has no right to participate in a criminal proceeding. The question whether the cheque in question was issued in discharge of legally enforceable debt or liability or not is a pure question of fact and cannot be gone into at this stage.

Paras-3 & 4

For Petitioner: Mr. Somnath Banerjee

THE COURT:

1. Invoking Section 482 of the Code of Criminal Procedure the petitioner, a company incorporated under the Companies Act, 1956 has moved this Court for quashing of its prosecution under Section 138 of the Negotiable Instruments Act on the following grounds;

(a) The company has sought to be prosecuted under Section 138 of the N.I. Act without the aid of Section 141 of the said Act.

(b) The evidence was recorded behind the back of the petitioner.

(c) There is no legally enforceable debt or liability.

2. Heard the learned advocate appearing on behalf of the petitioner. Perused the materials on record.

3. The contention of the learned advocate of the petitioner that no company can be prosecuted for an offence punishable under Section 138 of the N.I. Act without the aid of Section 141 of the said Act is completely misconceived, absurd and without any substance.

4. According to Section 141 of the Negotiable Instruments Act, if the person committing an offence under Section 138 of the said Act is a company, every person who at the time of the offence was committed, was in-charge of, and was responsible to the company for conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be prosecuted against and punished accordingly. Thus, by operation of the provisions of Section 141 of the Negotiable Instruments Act, the officers of a company are made vicariously liable for an offence committed by a company under Section 138 of the Negotiable Instruments Act. The said provision has nothing to do with the prosecution of a company under Section 138 of the N.I. Act. In this case the recording of evidence has not yet been commenced as such question of recording the same behind the back of the petitioner does not at all arise. In any event, according to the scheme of the Code of Criminal Procedure, no initial deposition is required to be recorded in presence of an accused, and unless the summons is issued the accused has no right to participate in a criminal proceeding. The question whether the cheque in question was issued in discharge of legally enforceable debt or liability or not is a pure question of fact and cannot be gone into at this stage.

5. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

6. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)