

(2016) 04 CAL CK 0039
In the Calcutta High Court
Case No : CRR No. 3472 of 2014

M/s. Monarch India (P) Limited

APPELLANT

Vs

M/s. Ashirwad Food Products Private Limited

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2016) 3 CalCriLR 453

Hon'ble Judges : Ashim Kumar Roy, J.

Bench : Single Bench

Advocate : Mr. Shib Sankar Banerjee, Mr. Dipak Kumar Mukhopadhyay,
Advocates, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—Seeking quashing of complaint case no. 11483 of 2013, now pending before the Metropolitan Magistrate, 15th Court, Calcutta, the petitioner has approached this court.

2. The sole ground on which quashing has been sought for is this, while the complaint case was filed for dishonour of a cheque amounting to Rs. 4,71,625/- simultaneously, a company petition being C.P. 448 of 2013 under section 433/434 of the Companies Act has been filed for winding up of the company for realisation of the said amount and a Division Bench of the Hon"ble High Court in an appeal directed the petitioner to deposit a sum of Rs. 5 lakhs with the Registrar, Original Side, Calcutta in five equally monthly instalments.

3. It be noted that on the same contention before the court below, an application for discharge was filed by the petitioner but the court below has rejected the same.

4. It goes without saying a winding up proceeding for recovery of dues instituted by the creditor and a criminal proceeding under section 138 of the N.I. Act are

distinct and different. They are independent of each other. One does not prohibit the other.

5. No company can escape from penal liability under section 138 of the Negotiable Instruments Act on the premise that a petition for winding up of the company was presented even prior to the company being called upon by a notice issued under section 138 of the N.I. Act to pay cheque amount, dishonoured.

6. When a cheque is received by a holder, the court has to presume, (a) It is a cheque of the nature referred to in section 138 of the N.I. Act; and (b) Such cheque was received for the discharge of a legally enforceable debt or liability. It is a legislative mandate that the court should proceed with the assumption that such cheque was received for the discharge of a legally enforceable debt or other liability until the drawer proves that it is not so. There is no provision in the Companies Act, which prohibits, the enforcement realisation of the debt due from a company. When a company goes into liquidation, enforcement of realisation of debt due from the company is only made subject to the condition prescribed therein. But that does not mean that the debt has become unenforceable altogether. The special provision incorporated in the Companies Act regarding the debt and liabilities due from the company will not render the debt unenforceable and therefore a prosecution under section 138 of the N.I. Act cannot be quashed on the ground of pendency of winding up petition. In this regard reliance may be placed in the case of Pankaj Mehra v. State of Maharashtra, AIR 2000 SC 1953.

7. This criminal revision has no merit and accordingly stands dismissed.

8. Ad interim order, if any, stands vacated.