

20.09.2020

CRR 16 of 2020

court no. : 34
item no. : PB-233
matter : 482
status : DO
transcriber : nandy/poppy

(Via Video Conference)

Bodhisatva Banerjee
Vs.
Axis Bank Limited.

In Re: An application under Section 397/401 read with Section 482 of the Code of Criminal Procedure.

Mr. Nigam Asish Chakraborty, Advocate
Mr. Agniva Banerjee, Advocate

.....for the Petitioner

Mr. Kaushik Chatterjee, Advocate

..... for the Opposite Party

Learned Advocate for the petitioner prays for quashing of the proceeding in respect of Complaint Case No. C/52799/17 under Sections 138/141 of the Negotiable Instruments Act, 1881 on two grounds. Firstly, the present petitioner was not a Director, as he had resigned earlier than the date on which the cheque was dishonoured and the cause of action of the case arose after the notice of dishonour was served upon the accused-company. The second issue which has been agitated regarding the *mala fide* involvement, wherein the complainant first declared the account to be non-performing asset and, thereafter, presented the cheque for encashment when automatically the cheque got dishonoured.

Mr. Chatterjee, learned Advocate, appearing for the complainant/opposite party, on the other hand, submits that the petitioner happened to be an authorized signatory of the cheque and so far as the other issue is concerned, it has been

contended that there was no suppression of material facts and the complaint was filed by abiding all the necessary statutory requirements, on the basis of which the learned Chief Metropolitan Magistrate was pleased to take cognizance of the offence.

I have considered the submissions advanced by both the parties and I am of the opinion that so far as the liability of the Directors are concerned, the documents enclosed along with the revisional application could have appealed to this Court but the learned Advocate for the petitioner is unable to convince this Court regarding the issue of the petitioner being a signatory to the cheque. As such, the first contention advanced by the petitioner is turned down.

So far as the second issue is concerned regarding first declaring the account as a non-performing asset and, thereafter, presenting the cheque which automatically would be dishonoured, goes to show the *mala fide* of the complainant/opposite party, I am of the view that the same is a question of facts which is to be adduced by way of evidence and this Court while exercising its power under Section 482 of the Code of Criminal Procedure, only on affidavits, is not in a position to adjudicate on the issues. The second point, accordingly, is also turned down.

However, the issues have their relevance in course of trial and as such the petitioner would be at liberty to adduce both oral and documentary evidence before the learned

Magistrate in course of trial for proving his innocence.

No interference is called for at this stage.

Accordingly, **CRR 16 of 2020** is **disposed of** with the above observations.

Pending applications, if any, is subsequently disposed of.

Interim order, if any, accordingly stands vacated.

Urgent Photostat Certified Copy of this order be given to the parties, if applied for, on priority basis.

(Tirthankar Ghosh, J.)