

Form No. J(2)

***IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION***

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 246 of 2021

Solar Designs Private Limited & Ors.

-vs-

The State of West Bengal & Anr.

For the Petitioner : Mr. Kumarjyoti Tewari

For the Opposite Party no.2: Mr. Amar Dudhwewala,
Mr. Karan Dudhwewala,

Heard on: 19.03.2021

Judgment on: 19.03.2021

Jay Sengupta, J.:

This is an application praying for quashing of a proceeding in a complaint case no. CS/12400/2020 under Sections 138 and 141 of the N.I. Act presently pending before the Learned 14th Metropolitan Magistrate, Calcutta.

Learned counsel for the petitioner submits as follows. The cheque in question was given by the petitioners to the complainant in 2012 as a co-lateral security during their business transactions. In 2014 the business transactions were

closed. The petitioner relies on a copy of a letter given from the petitioner's side admitting that the cheque was given by the accused as collateral security, but containing signature of the complainant. Reliance is also placed on the certificate issued by a bank that the cheque in question was given from a cheque book, which was issued to the petitioner in 2012. As such, no prima facie case is made out as would be evident from a plain reading of the petition of complaint. The consideration behind the cheque has not been proved at all. Any further continuation of the impugned proceeding shall be an abuse of the process of Court. Reliance is placed on the decision in the case of Indus Airways Private Limited & Ors. – vs- Magnum Aviation Private Limited & Anr., reported in (2014) 12 SCC 539 and it is submitted that it is the obligatory on the part of the complainant to make out a case that there was a consideration behind the issuance of the cheques.

Learned counsel for the private opposite party submits as follows. The documents relied on by the petitioners, namely, the purported letter given by the accused/petitioner, but containing signature of the complainant and the purported certificate issued by the bank are documents that are required to be proved during trial. The petition of complaint makes out

a prima facie case and it is for the accused to rebut the presumption under Section 139 of the N.I. Act. Reliance is placed on the decision in the case of HMT Watches Limited – vs- M.A. Abida & Anr., reported in (2015) 11 SCC 776 and it is submitted that whether the cheques were given as a security or not or whether there was any outstanding liability or not is a question of fact that could have been determined only during trial.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the opposite party and have perused the revision petition.

In State of Orissa –vs- Devendra Nath Padhi, reported in 2005 SCC (Cri) 415, the Hon'ble Apex Court held that the private documents cannot be looked into before trial unless such documents are of sterling quality and unimpeachable character. The documents that are referred by the petitioner for seeking quashing of the proceeding, namely, the letter issued by the accused, but signed by the complainant, admitting that the cheque was issued as a co-lateral security and a certificate issued by the private bank are, quite indubitably, not of sterling quality and unimpeachable

character. These are documents that have to be proved essentially during trial.

The decision relied upon by the petitioner in Indus Airways Private Ltd. and Ors.(Supra) is distinguishable from the present facts inasmuch as in that case there were certain undisputed facts that the supplier received a letter from the purchaser canceling the purchase orders and requesting the supplier to return the private cheques. The facts are not so here.

It was laid down by the Hon'ble Apex Court in the case of HMT Watches Limited (Supra) that whether the cheques were given as security or not or there was outstanding liability is a question of fact that can be determined only by the trial court.

Therefore, the contention of the petitioner that the impugned proceeding is not maintainable in view of the two documents as referred to above cannot be entertained at this stage.

Moreover, from a plain reading of a petition of complaint, a prima facie the case appears to have been made out under Sections 138 and 141 of the N.I. Act. However, it will be open only to the accused to rebut the presumption under Section 139 of the N.I. Act during trial.

In view of the above, I do not find any merit in the present application. Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Jay Sengupta, J.)