

CRR 1037 of 2021
(Via video conference)

In the matter of : Debajyoti Goswami

.....Petitioner

Mr. Kajal Mukherjee
Mr. Manoj Kurni
Mr. Bikash Chakraborty ...for the petitioner

Mr. Krishan Ray
Mr. Sekhar Mukherjee for the opposite party

Learned advocate for the petitioner is aggrieved by the order dated 6.2.2021. He submits that the petitioner is the proprietor of M/s. Jyoti Enterprise and as such M/s. Jyoti Enterprise should be incorporated as an accused. He further submits that he is covered by the judgments of the Hon'ble Supreme Court in the case of **Aneeta Hada vs. Godfather Travels and Tours Pvt. Ltd.** reported in **(2012) 5 SCC 661** ; **Gunmala Sales Pvt. Ltd. vs. Anu Mehta and Ors.** reported in **(2015) 1 SCC 103** and a coordinate bench judgment passed in CRR 2487 of 2018.

The learned advocate for the petitioner draws the attention of this court to paragraph 12 of the judgment of the Hon'ble Apex Court in **Gunmala Sales Pvt. Ltd. (Supra)** and emphasizes on the definition of company which would include within its ambit a proprietorship firm as the word "Firm" as appearing in the explanation to Section 141 of the Negotiable Instrument Act, is appearing.

I have considered the submissions advanced by the petitioner and I am of the view that the same is untenable. The

legal proposition so far as the concept of company, partnership firm and a proprietorship concern are concerned, there is different perceptions.

However, it has been submitted before this court that it is the present petitioner/accused who has signed the cheque. Under no circumstance, without going into evidence, the present petitioner can be absolved of his liability at this stage as the complaint prima facie makes out a case, so far as the admissibility of the cheque is concerned and the presumptions relating to Section 139 of the Negotiable Instrument Act. The issue of debt or liability can be agitated by the defence by rebutting the prosecution evidence either by way of cross-examination or by way of adducing defence evidence but so far as the maintainability of the complaint at the inception is concerned, there is no scope for interference of this court.

Accordingly, CRR 1037 of 2021 is dismissed.

Pending application, if any, is consequently disposed of.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)