

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**CRR 186 of 2022
With
CRAN 1 of 2022**

**Koushik Das @ Rajdeep Das
Vs.
Bidhan Chandra Roy and Anr.**

Mr. Sobhendu Sekhar Roy
Mr. Amarendra Chakraborty
Mr. Argha Banerjee
...for the petitioner

Mr. Abhijit Kumar Adhya
Mr. Kalyan Ghosh
...for the opposite party No.1

Item No.26

Heard & Judgment on: 10.11.2022

Bibek Chaudhuri, J.

The petitioner is the accused of Complaint Case No. **C-475 of 2017** being a proceeding under Section 138 of the Negotiable Instruments Act pending before the learned Judicial Magistrate, First Court at Barrackpore.

The petitioner has filed the instant revision praying for quashing of the aforesaid complaint case pending against him.

Learned advocate for the petitioner at the outset draws my attention to an order dated 25th January, 2022 passed by a Co-ordinate Bench in the instant revision while admitting the revision for hearing. It is pointed out by the learned advocate for the petitioner that the petitioner prayed for quashing of the aforesaid complaint case alleging, inter alia, that the complainant /opposite party filed a Court complaint alleging, inter alia, that the opposite party gave an accommodation loan of Rs.62 lakhs to the petitioner and in discharge of his part liability the petitioner issued a cheque of Rs.2 lakhs in favour of the opposite party. Eventually, the said cheque was bounced resulting in initiation of Complaint Case No. **C-475 of 2017**. The petitioner challenged the very foundational fact of the case

mentioning, inter alia, that the opposite party lodged an FIR in the jurisdictional police station prior to initiation of the complaint case under Section 138 of the Negotiable Instruments Act alleging, inter alia, that the petitioner time to time extorted a sum of Rs.62 lakhs, thereby committing an offence punishable under Section 384 of the Indian Penal Code. Thus, in place the complainant pleaded that the accused extorted a sum of Rs.62 lakhs and in subsequent criminal proceeding under Section 138 of the Negotiable Instruments Act complainant alleges that he gave an accommodation loan amounting to Rs.62 lakhs to the petitioner.

It is fairly submitted by the learned advocate for the petitioner that the petitioner can only prove his case/defence by cross-examining the de facto complainant and contradicting his previous statement over the said sum of money. Therefore, the petitioner may be given a chance to cross-examine the complainant in the aforementioned case under Section 138 of the Negotiable Instruments Act. It is also submitted by the learned advocate for the petitioner that a criminal proceeding cannot be quashed with the aid of some contradicting statement made by the de facto complainant in respect of the amount in

question before the police authority resulting in registration of a police case. If the petitioner is able to prove his defence, either of two cases instituted by the complainant against him, one under Section 138 of the Negotiable Instruments Act and another under Section 384 of the Indian Penal Code cannot be permitted to be proceeded.

I find substantial force in the statement made by the learned advocate for the private opposite party/complainant that the Complaint Case No. **C-475 of 2017** is fixed for cross-examination of the complainant on 22nd December, 2022.

The petitioner is at liberty to cross-examine the complainant.

In view of such circumstances, the instant criminal revision is **disposed of** permitting the petitioner to cross-examine the complainant in the trial Court on the next date fixed.

The parties are at liberty to act on the server copy of this order.

With the disposal of the instant revision, connected applications, if any, are also disposed of.

(Bibek Chaudhuri, J.)

