

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 378 of 2022

Md. Sadrul Alam Khan & Anr.

-vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Baidurya Ghosal
Mr. P. Sinha Roy

Heard on : 11.02.2022

Judgment on : 11.02.2022

Jay Sengupta, J.:

This is an application challenging an order dated 18.02.2021 passed by the Learned Metropolitan Magistrate, Kolkata in Complain Case No. CS/72712/2018 under Section 138 of the Negotiable Instruments Act.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are the accused in this case. Prior to the

lodging of the present application, the petitioner no. 1 had lodged a GD Entry that certain cheque leafs belonging to him were misplaced from his custody. After some time, he received a summon in the present case. The complainant is a neighbour of the petitioners and was in visiting terms. In view of such facts, the petitioners filed an application before the learned Magistrate claiming that the petition of complaint was not maintainable. However, such prayer was turned down erroneously. No prima facie case is made out against the petitioners as would be evident from a plain reading of the petition of complaint and any further continuation of the impugned proceeding shall be an abuse of the process of the Court.

I have heard the submissions of the learned counsel appearing on behalf of the petitioners and have perused the revision petition.

First, a Learned Magistrate cannot recall a process issued by him. This would amount to recalling or reviewing his own order, which is not permissible in law. Reliance is placed on the ratio laid down in **Adalat Prosad, (2004) 7 SCC 338**.

The petitioners further contended that the cheque that was the subject matter of the present case was one which he had lost earlier and he had lodged a GD Entry about this prior to the lodging of the present complaint.

Whether the petitioners actually lost the cheque leaf before the

institution of the case or had lodged the GD Entry to set up a subsequent plea that the cheque had been lost would be disputed questions of fact that cannot be dealt with in an application under Section 482 of the Code of Criminal Procedure. These can only be decided during the trial.

In view of the above, I do not find any merit in this application.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)