

22.03.2022
Item No.08
suman
Ct.42

(Via Video Conference)

CRR 542 of 2022

Dr. Atanu Chattopadhyay & Anr.
Vs.
Mr. Mukunda Lal Chatterjee & Ors.

Mr. Atanu Chattopadhyay
....petitioner (in person)

This is an application under Article 227 of the Constitution read with Section 482 of the Code of Criminal Procedure with a prayer to give effect to an order to secure ends of justice.

The instant criminal revision is moved by the petitioner No.1 in person. It appears from the application that the application was filed against an order dated 23rd February, 2021 passed by the learned Judicial Magistrate, 2nd Court, Serampore, Hooghly. The learned Judicial Magistrate, 2nd Court, Serampore at Hooghly passed the following order.

"Today the record is put up on the strength of put up petition.

Today the complainant Sri Atanu Chattopadhyay by filing a petition prayed for this Ld. Court to pass an interim and ex parte order taking into account the urgency and medical emergency involved in this case. At the time

of hearing the complainant filed xerox copies of certain documents.

Heard and considered.

On perusal of the materials on record it appears before me that two cheques dt. 31.12.2020 were given by one Mukundalal Chatterjee in favour of the complainants of this case. Both cheques were deposited to the bank on 11.01.2021. Subsequently, on 10.02.2021 a return memo was received from the Bank Manager with the endorsement "insufficient fund". Thereafter the complainants served a demand notice by registered post to Sri Mukundalal Chatterjee on 18.02.2021 and filed the instant complaint case before the Ld. Court on 20.02.2021.

As per Section 138 of N.I. Act a legal notice is to be issued to the drawer within 15 days of dishonour of cheque by registered post with all relevant facts. The drawer is given a time of 15 days to make the payment. If the payment is not made within that period then the complainant is to file a criminal case u/s 138 N.I. Act against the drawer within 30 days from the date of expiry of 15 days as specified in the notice, with the concerned Magistrate Court within the jurisdiction.

However, in this instant case the complainant served notice upon the drawer on 18.02.2021 and filed the instant case on 20.02.2021 without giving the drawer the

time as specified in the statute. As a result, the instant complaint case is a premature one and cannot be entertained by this Ld. Court at this stage.

Under such circumstances let the application u/s 200 of Cr. P.C. be returned to the complainant.

Thus, the case is disposed of.

Office to note in the register and in the CIS.”

Thus, on perusal of the order it is found that the petitioner filed an application under Section 138 of the Negotiable Instruments Act with other penal provisions on 20th February, 2021. It is recorded by the learned Magistrate that the demand notice was issued upon the drawer on 18th February, 2021. Thus, within two days after issuance of demand notice he filed a complaint case without giving the drawer the statutory period of time either to comply with the direction contained in the demand notice or to refuse it. As a result, the complaint was treated to be premature by the learned Magistrate and was returned to the petitioner/complainant.

On perusal of the impugned order, I do not find any infirmity or illegality in the impugned order.

Therefore, the instant criminal revision is not maintainable. However, the petitioner is at liberty to take necessary action against the opposite parties in accordance with law and in this respect the Secretary, State Legal Services Authority is directed to render all

possible help and legal assistance and advice to the petitioner.

The revisional application is, thus, disposed of.

(Bibek Chaudhuri, J.)