

13.06.2022

Item No.4
Ct.No.34
dc.

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

C.R.R. 560 of 2022

**Sri Arnav Das Barman
versus
Sri Ashish Kumar Bera**

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 filed for quashing of proceeding arising out C.R. Case No. 242 of 2019 under Section 138 of the Negotiable Instruments Act pending before learned Additional Chief Judicial Magistrate, Haldia, Purba Medinipur.

Mr. Jayanta Samanta,
Mr. Karunamoyee Samanta ... For the Petitioner.

Mr. Anirban Dutta ... For the Opposite Party.

The learned advocate for the petitioner is aggrieved by the continuance of C.R. Case No. 242 of 2019 under Section 138 of the Negotiable Instruments Act pending before the learned Additional Chief Judicial Magistrate, Haldia, Purba Medinipur.

The issues raised by the learned advocate for the petitioner relate to initiation of criminal proceeding as according to the learned advocate although an artificial person was named in the cheque, yet the power of attorney relied upon was by an individual and on the basis of the same, the learned trial court took cognizance of the offence and subsequently issued process. Learned advocate has also raised the issue that without compliance of provisions under Section 202 of the Code of Criminal Procedure, the learned Magistrate has issued process.

Having regard to the fact that the accused happens to be an individual, I am of the opinion that re-exercise of the same provision after the petitioner has appeared before the court is unwarranted in the facts and circumstances of the present case.

So far as the issue of debt and liability which has been questioned by the learned advocate for the petitioner, I am of the opinion that the same relates to question of fact. The petitioner would be entitled to both by way of oral evidence and documentary evidence, rebut the prosecution case at the stage of cross-examination and at the stage of defence evidence.

With the aforesaid observations, the revisional application being CRR 560 of 2022 is disposed of.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)