

13.06.2022

Item No.5
Ct.No.34
dc.

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

C.R.R. 563 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. 240 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 petitioner is aggrieved by the fact that process was issued without adhering to the provisions of Section 202 of the Code of Criminal Procedure.

I have gone through the petition of complaint and I find that the petitioner happens to be the sole accused in a case where cheque has been issued by him. In fact, there is specific averment in the petition of complaint and also examination under Section 200 of the Code of Criminal Procedure and the purpose of Section 202 of the Code of Criminal Procedure is to find out whether any person has been falsely implicated in any case in case the person is staying far off from the court where the criminal case has been instituted.

Having regard to the parameters followed by the learned Magistrate while issuing process, I am of the opinion that only recording of an order under Section 202 of the Code

of Criminal Procedure would be very hypertechnical approach. What is required to be found out is whether a person has been falsely implicated or not. In the present case, the requirement of a prima facie case regarding issuance of cheque and signature is not doubted by the accused. However, what has been challenged is regarding the debt or liability in respect of issuance of cheque. In view of the latter part of the question raised by the learned advocate for the petitioner, I am of the opinion that debt or liability in a case under Section 138 of the Negotiable Instruments Act is concerned, is a question of fact which is to be decided in course of trial and is not to be decided summarily prior to issuance of process. The petitioner would be entitled to place or canvass his point so far as the issue of debt or liability both by way of oral evidence and by documentary evidence in course of cross-examination as well as defence evidence.

No interference is called for at this stage as this Court, feels that given the set of circumstances under which the process was issued by the learned Magistrate, the whole re-exercise of power for issuance of summons for non-compliance of Section 202 of the Code of Criminal Procedure would be wastage of time.

With the aforesaid observations, the revisional application being CRR 563 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.)