

Item No.5
Ct.No.34
dc.

**C.R.R. 520 of 2016
with
CRAN 1 of 2021
with
CRAN 2 of 2021
(Via Video Conference)**

In Re: An Application under Section 482 of the Code of Criminal Procedure.

Mr. Diprav Deb,
Mr. Tapas Saha,
Mr. Sourav Mondal,
Mr. Debdatta Saha ... For the Opposite Party No.2.

By the judgment and order dated 30.07.2012, the learned Metropolitan Magistrate, 8th Court, Calcutta was pleased to convict the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to suffer T.R.C. and to pay compensation for a sum of Rs.2,25,000/- to

the complainant within one month from the date of passing of the said order.

Being aggrieved by the aforesaid judgment and order, the petitioner preferred a revisional application before the learned Chief Judge, City Sessions Court, Calcutta which was time barred and accordingly, the said revisional application was accompanied with an application under Section 5 of the Limitation Act.

The said judgment and order dated 22.08.2013 passed in Criminal Revision No. 64 of 2013 reflects that the learned court without addressing the issues of the legality or illegality of the judgment, so passed by the learned Metropolitan Magistrate in the complaint case, dismissed the revisional application for being barred on the point of limitation thereby rejecting the application under Section 5 of the Limitation Act. A final judgment and order of conviction and sentence has serious ramifications. As such, the courts should ordinarily not bar the accused or the petitioner from addressing the issues on merits. Accordingly, the judgment and order dated 22.08.2013 passed by the learned Chief Judge, City Sessions Court, Calcutta in Criminal Revision No. 64 of 2013 is hereby set aside.

At the time of admission of this revisional application, a co-ordinate Bench of this Court on 04.02.2020 was pleased to direct as follows :

“Subject to the deposit of Rs.2 lakhs i.e., the amount of the cheque by the petitioner, without prejudice, before the learned

trial court within three weeks from this date, the operation of the impugned judgment and order shall remain stayed till six weeks from this date. The complainant shall be at liberty to withdraw the said sum, but such payment shall be subject to the final decision in this revision.”

In view of the liberty granted to the complainant/opposite party no.2 to withdraw such amount during the pendency of this revisional application, I am of the opinion that the order dated 05.03.2020, passed by the learned Metropolitan Magistrate, 8th Court, Calcutta, refusing such prayer of the complainant/opposite party no.2 was not in consonance with the order passed by this Court on 04.02.2020.

The learned Magistrate is directed to release the amount of Rs.2,00,000/- (rupees two lakh) so deposited in connection with the complaint case being C/23552/2007 to the complainant/opposite party no.2 on usual undertaking. The said withdrawal would obviously be subject to the final outcome of Criminal Revision No. 64 of 2013.

With the aforesaid observations, the revisional application being CRR 520 of 2016 is partly allowed.

Interim order would be applicable, as directed above.

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.)