

30-11-2022
Subha
Item no.12
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 766 of 2021
With
CRAN 1 of 2022

Signet Media Services Pvt. Ltd & Ors.
-versus-
Dibyendu Sekhar Lahiri

Mr. Subhabrata Dutta
Mr. Debjani Roy Choudhruri
Mr. Aranya Saha
....for the appellants/petitioners.

Mr. Sandipan Ganguly, Sr. Advocate
Mr. Dipanjan Dutt
Mr. Tanmoy Roy
...for the Opposite Party.

The revisional application was preferred by the petitioners challenging the continuance of Complaint Case No. 13551 of 2020 pending before the learned Metropolitan Magistrate, 14th Court, Calcutta under Sections 138/141 of the N. I. Act.

Learned advocate appearing for the petitioners contends that the cheque was issued in favour of “Asha Audio and Communication Private Limited” and the case was initiated by Asha Communication, a proprietorship concern who was represented by its constituted attorney, Mr. D. S. Lahiri.

Learned advocate appearing on behalf of the petitioners challenges the authority of the complainant to institute the instant complaint as the holder in due course of the cheque was a private limited company, while the complaint was filed by a separate individual by dint of a power of attorney in respect of a proprietorship

firm.

Mr. Ganguly, learned senior advocate appearing on behalf of the complainant/opposite party in course of hearing, took out an application praying for granting leave to the payee/holder in due course of the dishonoured cheque bearing no. 002716 dated 31.01.2020 to pursue the claim of the dishonoured cheque by initiating a fresh proceedings.

Mr. Subhabrata Dutta, learned advocate appearing on behalf of the petitioners filed an opposition in respect of the said application of the complainant assigning reasons that once cognizance has been taken by the learned Magistrate and the propriety of the order has been challenged, scrutinized and found to have been mechanically passed, the fault of the complainant cannot be cured by way of such an application.

Having regard to the subject matter of the present revisional application, I find that so far as the initiation of the proceedings are concerned, the same was filed by a wrong complainant i.e., wrong holder in due course.

Accordingly, all further proceedings relating to Complaint Case No. 13551 of 2020, as also the orders passed therein by learned Chief Metropolitan Magistrate, Calcutta and learned Metropolitan Magistrate, 14th Court, Calcutta are hereby quashed.

The complainant has sought for a leave in CRAN 1 of 2022 which has been resisted by the accused/petitioners. If such a remedy is available in law, particularly for adjudicating the merits of the case in relation to existing legal debts or liabilities, the learned Metropolitan

Magistrate would in a proper proceedings consider the same in the background of Section 142 of the N. I Act.

This court need not go into the merits of the case.

In view of the aforesaid order being passed and the remedies which are to be exhausted, the original documents, if any, filed before the learned Chief Metropolitan Magistrate, Calcutta or learned Metropolitan Magistrate, 14th Court, Calcutta, may be returned to the complainant on proper undertakings.

Accordingly, the CRAN application being CRAN 1 of 2022 is disposed of.

As such, the present revisional application being CRR 766 of 2021 is allowed.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]