

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**I.A. No. CRAN/1/2022
in
C.R.R. 1632 of 2022**

**Nityananda Karmakar
Vs.
State of West Bengal & Anr.**

For the petitioner : Mr. Mit Guha Roy, Adv.

**For the O.P.No.2 : Mr. K.C.Gara, Adv.
Ms. S. Agarwal, Adv**

Heard on : 29.06.2022

Judgment On : 29.06.2022.

Bibek Chaudhuri, J.

The instant matter is listed for hearing of an application for extension of interim order. However, on perusal of the materials on record, this Court is of the view that the instant revision can be disposed of here and now.

It is the grievance of the petitioner that the petitioner is the accused in respect of complaint case under Section 138 of the Negotiable Instruments Act (herein after described as N.I. Act). The

said case was registered as C.S./29343/2019 and pending before the learned Metropolitan Magistrate at Calcutta. From the certified copies of the documents it is ascertained that on 1st April, 2022, the accused/petitioner filed an application for adjournment on the ground that a talk of compromise was going on by and between the parties. On the said petition it was recorded by the learned Magistrate, "Record be sent to Mediation for settlement". However, the order on the petition did not find place in the order sheet of the record. Next date was fixed on 20th April, 2022. On 20th April, 2022 the Trial Court passed the following order:-

"Today is fixed for D/W.

Complt. is present along with his Ld. Advocate.

accused is absent by filing petition.

Ld. Advocate for the accd. is present and filed a petition on the ground as stated therein & prays for an adjournment.

Petition is taken up for hearing.

Hd. Both sides and petition is rejected.

No further time will be allowed as ld. defiance counsel has been given sufficient opportunity to file D/W. but they failed to do so.

Hence, D/W. is stands closed.

To 20.5.22 for argument."

It is submitted by the learned Advocate for the accused/petitioner that the petitioner is agreeable to settle the dispute of payment of cheque amount and certain reasonable amount towards compensation. But the complainant/opposite party is demanding huge sum of money towards compensation. So the petitioner wanted to settle the dispute in Mediation. However, the record was not sent to the Mediation.

Learned Advocate for the private opposite party has vehemently opposed the submission made by the learned Advocate for the petitioner. It is submitted by the learned Advocate for the opposite party/complainant that the complainant is also ready and willing to settle the dispute in Court itself specially when the offence under Section 138 of the N.I.Act has been made compoundable.

Having heard the learned Advocates for the parties and on perusal of the materials on record, this Court is of the view that the learned Magistrate in the Trial Court acted with the material irregularity after passing the order of sending the case record to Mediation for settlement on the petition dated 1st April, 2022 filed by the petitioner. The record was however not sent to Mediation. On the contrary on 20th April, 2022 when the date was fixed for defence witnesses, the learned Trial Judge curtailed witness action and fixed next date for argument.

Since the offence under Section 138 of the N.I. Act is made compoundable, the Trial Court itself can compound the offence on the basis of settlement. Therefore, parties are at liberty to file joint petition for compromise before the Trial Court for realization of cheque amount along with reasonable amount of compensation fixed by the Trial Court. If the complainant does not agree with the compensation amount, the complaint case shall proceed and in that case, the accused shall be given opportunity to adduce defence witness.

In view of the above order, the order dated 20th April, 2022 passed by the Trial Court is set aside. The instant criminal revision is **disposed of** with the above observation.

The parties are at liberty to act upon the server copy of the order.

The instant revisional application along with connected application is also **disposed of**.

(Bibek Chaudhuri, J.)