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June 6,
2022
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C.R.R. No.1753 of 2022

In Re: A petition under Section 482 of the Code of Criminal Procedure,
1973;

Sanjay Banerjee
Versus
The State of West Bengal & Ors.

Mr. Moyukh Mukherjee.
...for the petitioner.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that without effecting any service of demand notice, a case under Section 138 of the Negotiable Instruments Act has commenced against the present petitioner. According to Mr. Mukherjee, the address which has been provided is wrong/incorrect and at the said incorrect address, demand notice was allegedly served upon the petitioner.

I find that the complainant at the initial stage has been able to make out a case for issuance of process and the learned Magistrate on a perusal of the documents more particularly the demand notice and the effecting of service so contended by the complainant continued with the proceedings.

According to the learned advocate appearing for the petitioner the examination of the accused under Section 251 of the Code of Criminal Procedure is yet to be proceeded with by the learned trial court.

Be that as it may, the complainant in a summon proceeding case will lay down his evidence and would prove

amongst others that the service of demand notice was effected. It is for the petitioner as an accused to cross-examine and lay the foundation that there was no effective service according to the statute. The points so raised by the learned advocate for the petitioner is a disputed question of fact which cannot be adjudicated summarily and, as such, no interference is called for. The petitioner would be at liberty to canvass such points in course of cross-examination, defence evidence and at the final stage of arguments of the case.

With the aforesaid observations, CRR 1753 of 2022 is disposed of.

Pending application, if any, is consequently disposed of.

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

(Tirthankar Ghosh, J.)