

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA (SB) 72 of 2022

**Nikhil Yarn Private Limited
-vs-
State of West Bengal & Anr.**

For the appellant : **Mr. Soumya Nag**

Heard on: : 25th August, 2022

Judgement on: **25th August, 2022.**

Tirthankar Ghosh, J.

The present appeal has been preferred against the judgement and order dated 27.12.2021 passed by the learned Metropolitan Magistrate, 20th Court, Calcutta in Case No. CS/113521 of 2016. The said case is under Section 138 of the Negotiable Instruments Act.

Earlier, directions were passed by this court for waiving preparation of the paper book and the petitioner was directed to effect service upon the private opposite party. Today, learned

advocate appearing for the petitioner/appellant has furnished affidavit of service. Let the same be kept with the record.

Record of the appeal reveals that by an order dated 21.01.2017, process was issued by the learned Metropolitan Magistrate, 20th Court, Calcutta and subsequently for non-appearance, warrant of arrest was issued. Till this judgement and order of acquittal was passed on 27.12.2021, the accused never appeared before the court nor any proclamation or attachment was issued by the learned Magistrate. Record also reflects that complainant was present in court till 18th July, 2019, however, thereafter, his presence was erratic and finally show cause was issued by the learned Metropolitan Magistrate for satisfying the court regarding the factum of the complaint case being dismissed for not being pursued by the complainant. The said show cause was never answered and finally, the learned Metropolitan Magistrate, 20th Court, Calcutta by the impugned order was pleased to dismiss for default, acquit the accused and recall the process. Surprisingly, on the said date also, the execution return of the warrant of arrest was also pending.

It would not be out of place to state that in a year 2020-21 because of Covid-19, the courts operated in a staggered manner and the litigants were disillusioned for some cases regarding the manner in which the courts progressed with a case.

So far as the present case is concerned, the complainant was pursuing the litigation diligently from the year 2016 to 2019.

In spite of efforts, the learned trial court did not take steps for tracing the whereabouts of the warrant of arrest, so issued which is in different state. Mechanical orders of execution return of warrant of arrest were passed on umpteen occasions. There was scope for a litigant to be frustrated who with an expectation approached the court for a relief or remedy.

Mr. Nag, learned advocate appearing for the appellant submits an opportunity be granted to the present appellant to place his case on merits before the learned trial court.

Having regard to the prayer so advanced and the manner in which I find that the case has been dealt with by the learned court, particularly the accused could not be brought within the ambit of the jurisdiction of the court, I am of the opinion that such an opportunity must be granted to the present complainant to pursue his remedies under Section 138 of the N. I. Act for which he has suffered a lot.

Consequently, the order dated 27.12.2021 passed by the learned Metropolitan Magistrate, 20th Court, Calcutta is hereby set aside.

The appellant/complainant is directed to be present before the learned Metropolitan Magistrate, 20th Court, Calcutta on 15th September, 2022.

The learned trial court would continue with the proceedings, fix at least one date in a month and issue harsher process of law for compelling the appearance of the accused person.

Thus, the appeal being CRA (SB) 72 of 2022 is allowed.

Pending applications, if any, are consequently disposed of.

The Learned Metropolitan Magistrate, 20th Court, Calcutta is directed to act upon the copy of this judgement duly downloaded from the Official website of this court.

All concerned parties shall act in terms of the copy of the judgement duly downloaded from the official website of this Court.

[Tirthankar Ghosh, J]