

15.12.2022

Item No.34
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1392 of 2021

with

CRAN 3 of 2022

Subir Sarkar

versus

Mou Chowdhury

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chattopadhyay,
Mr. Santanu Maji,
Ms. Snigdha Saha,
Mr. Debdipto Banerjee,
Mr. Gourab Das

... For the Petitioner.

Mr. Arnab Mandal

... For the Opposite Party.

Mr. Chattopadhyay, learned advocate appearing for the petitioner challenges the continuance of the proceedings being C.R. Case No. 119 of 2019 pending before learned Judicial Magistrate, 4th Court, Purba Bardhaman in connection with Section 138 of the Negotiable Instruments Act. According to the learned advocate, the accused/petitioner and the complainant/opposite party were related to each other by way of a partnership firm. The cheque in issue was an outcome of the act and activities of the complainant/opposite party pursuant to which the accused/petitioner instituted a case under Section 156(3) of the Code of Criminal Procedure and Bardhaman Police Station Case No. 696/2018 dated 25.10.2018 was registered for investigation under Sections 341/384/406/420/34 of the Indian Penal Code. Learned advocate by drawing the

attention of the Court to a specific allegation made in the FIR submitted that the petitioner specifically alleged that the complainant and her associates forced him to sign documents to the extent of acknowledging a sum of Rs.22,00,000/- as loan and on the said document, the wife and mother of the accused were made witnesses. Learned advocate submits that in view of the partnership business existing between the complainant and the accused and there being no settlement of accounts, there cannot be any legally enforceable debt or liability arising out of the cheque for which the present case has been initiated before the jurisdictional court.

I have considered the submissions advanced by the petitioner. The same are factual circumstances which have been placed before this Court. The provision for which the case was initiated before the learned Judicial Magistrate is under Section 138 of the Negotiable Instruments Act, wherein statutory presumption under Section 139 of the Negotiable Instruments Act is available and the holder in due course of the cheque has already set the law into motion. The question of facts may have force or may not have force. The same is to be adjudicated and opportunity must be granted to the complainant to answer the charges which have been brought against her. I find that the nature of the allegations made in Bardhaman Police Station Case No. 696/2018 dated 25.10.2018 relates to the business transaction which may also draw the contention/allegation in the case under Section 138 of the Negotiable Instruments Act. As the charge-sheet

has already been submitted before the jurisdictional court, I direct the learned Chief Judicial Magistrate, Purba Bardhaman to assign both the cases i.e. Bardhaman Police Station Case No. 696/2018 dated 25.10.2018 and C.R. Case No. 119 of 2019 to one and the same court.

No interference is called for at this stage. However, the petitioner would be at liberty to adduce all documentary and oral evidence to rebut the prosecution charges under Section 138 of the Negotiable Instruments Act.

With the aforesaid observations, the revisional application being CRR 1392 of 2021 is disposed of.

Pending connected application is 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.)