

CRR 2254 of 2018

In the matter of: Jogendra Kumar Ganoria

....Petitioner.

Mr. Jaydip Basu

Mr. Kaustav Chatterjee

... for the Petitioner.

Affidavit of service filed in Court today be kept with the record.

In spite of service of notice none appears on behalf of the opposite party/accused.

Mr. Jaydip Basu, learned counsel appearing for the petitioner, Submits that this court vide order dated 14.03.2017 was pleased to direct the Trial Court to take necessary steps to follow the mandate of Section 143(3) of the Negotiable Instrument Act and conclude the trial at an early date preferably within a period of three months from the date of communication of this order without granting any unnecessary adjournment, while disposing an application under section 482 of the Code of Criminal Procedure being CRR no, 799/2017.

Mr. Basu further submits that vide order dated November 15, 2017 in CRR 3657 of 2017, Hon'ble High Court was pleased to direct the trial court *"to dispose of the Complaint Case No. 1290 of 2015 within a period of six months from the date of receipt of copy of this order positively without giving any unnecessary adjournment to either of the parties."* But in spite of those specific directions made by the High Court twice, the trial court had not yet concluded the proceeding and as per report, it appears that it is still fixed for ER/appearance.

This revisional application however has been directed against the orders dated 17.01.2018, 02.02.2017, 26.03.2018 and 26.4.2018 passed by the learned Judicial Magistrate, 2nd Court, Howrah in

Complaint Case No. C1290 of 2015 filed under Section 138 of the Negotiable Instruments Act.

The petitioner's contention is that accused in discharge of his lawful liabilities, issued account payee cheque bearing no.016366 dated 22.6.2015 amounting to Rs.1,50,000/- and when complainant presented the same for encashment at his banker on 23.6.2015 the same was returned with the remark 'fund insufficient' vide cheque return memo dated 23.6.2015.

The complainant/petitioner subsequently sent demand notice dated 07.7.2015 demanding payment of Rs.1,50,000/- within 15 days from the receipt thereof, through registered post with acknowledgement due and the same was received by the opposite party/accused on 08.7.2015 but even then he failed and neglected to pay the amount and as such, the petitioner filed complaint case No. C1290 of 2015 on 29.7.2015. Record reveals that the opposite party/accused surrendered before the trial court on 21.9.2015 and obtained bail.

It is further submitted that petitioner's witnesses were examined and cross-examined, then the accused was also examined under Section 313 of the Code of Criminal Procedure and examination of three defence witnesses also concluded on 18.8.2017. After conclusion of evidence of defence witnesses, the accused/opposite party had come up with an application for comparison by handwriting expert complainant's signature appearing on Ex-A and accused person's signature appearing on Ex4/3 with their admitted signature appearing on vokalatnama by way of filing an application on 18.8.2017. The learned trial court vide his order dated 17.01.2018 was pleased to allow the said application filed by the accused and was pleased to direct the impugned document marked as Exhibit-A along

with the signature of the complainant available on record be send to the handwriting expert at the cost of the accused to ascertain whether the handwriting and signature appearing on Exhibit-A is same or not. Since then the matter is pending for disposal.

Mr. Basu by referring a judgment passed by the Apex Court in ***Indian Bank Association and others vs. Union of India and others*** contended that Apex Court has given specific direction upon every Trial Court dealing with N.I. Act cases in paragraph 21(5), which is quoted herein below:-

“21(5) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.”

Needless to say that under the provisions of the Negotiable Instruments Act, the trial court should make every endeavour to dispose of the trial under Section 138 of the Negotiable Instruments Act through summary trial.

On perusal of the aforesaid application filed under section 45 read with section 47 of the Evidence Act it appears that accused has contended that he had issued one blank cheque by putting his signature against electricity charges amounting to Rs. 15,000/- and at the time of receiving such cheque , complainant had handed over one acknowledgement by putting his signature on a receipt which has been marked as exhibit ‘A’ in this case. Said exhibit ‘A’ i.e. acknowledgement of cheque of Rs. 15,000/- towards electricity charges marked Exhibit ‘A’ was signed by complainant and as such his signature on exhibit ‘A’ is required to be compared with his

admitted signature appearing on the Vokatnama by a handwriting expert. Accused /opposite party further contended that he never received any demand notice and as such the A/D card of EMS speed post which has been exhibited as 4/3 allegedly bearing accused's signature is actually a manufactured and forged signature and as such his signature on the on A/D card is also required to be compared along with his admitted signature appearing in the vokatnama.

It further appears that complainant/petitioner herein filed written objection and contended that accused failed to prove his defence story of payment of electricity charges by any cogent document and as said Exhibit 'A' being an undated , unstamped document has got no value in the eye of law and as such prayer made by accused for sending signature of complainant appearing on Exhibit 'A' and signature of accused appearing on A/D Card to the hand writing expert should be rejected.

Learned Trial Court after hearing the parties was pleased to observe that fair trial includes fair and proper opportunities to the accused to prove his innocence and as such the application for sending Exhibit 'A' to hand writing expert is entertainable at this stage in order to unearth the real truth and following principles of natural justice he allowed the application against which present revisional application has been preferred by the complainant/petitioner.

Having considered the facts and circumstances of the case and materials available in the record, it appears to me that the acknowledgement receipt in question has already been proved by the defence witness and marked as Exhibit 'A' and as such the trial court under an obligation to take judicial notice upon that document at the time of passing the judgment. Whatever may be probative value of the said document is a separate issue but when the said document has

been marked as exhibit and when complainant is not willing to send his signature marked as Exhibit 'A' to the hand writing expert , accused cannot have any liability to send it to the hand writing expert. Moreover from the substance of written objection it appears that complainant/petitioner has contended that said acknowledgement is unstamped, undated and does not bear signature of any witnesses and also contended that said acknowledgment had got no connection with the cheque because accused failed to prove that complainant ever provided any electricity to the accused. Accordingly the probative value of the document has been challenged by the petitioner which can be the subject matter in issue to determine whether there exists any legally enforceable debt. Accordingly fact in issue is probative value of Ex-A and not the signature appearing on Ex-A as it has already been marked as Ex-A and complainant does not want to compare his signature appearing on Ex-A.

The question of sending signature of accused /opposite party on A/D Card also does not find any leg to stand simply because the object of sending notice is to give an opportunity to the drawer of the cheque for making payment within specified period of 15 days and importance of receipt or non-receipt of the notice is relevant for the purpose of calculation of limitation period and also as to whether the suit has been filed at a premature stage or not . Here no such case has been made out and accused appeared in the case and all along contested the case. Moreover the presumption is always there under the General Clauses Act, if it is duly paid and duly addressed. Said signature on A/D Card has already been marked as exhibit 4/3 without any objection on 10.04.2017 before the learned court in presence of accused. Moreover it is submitted that accused as DW1

himself admitted the fact of receiving the said demand notice by him in his cross-examination.

In view of aforesaid, prayer for sending his signature on A/D card for comparison by an handwriting expert is clearly an after thought and such comparison by a handwriting expert is not at all required for the purpose of determination as to whether the accused has committed the offence under section 138 N.I. Act or not.

In view of above learned trial court was erred in law in allowing /accused/opposite party's petition vide order dated 17.01.2018 and as such said order is required to be interfered and liable to be set aside.

Having regard to the facts and circumstance of the case the order dated 17.01.2018 and all subsequent orders passed by learned Judicial Magistrate 2nd Court, Howrah, in case No. C1290/2015 is hereby set aside.

Learned Judicial Magistrate, 2nd Court, Howrah is directed to dispose of the Complaint Case No. C1290 of 2015 positively within a period three months from the date of receipt of this order, without being influenced by any observation made in this order.

However, there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Ajoy Kumar Mukherjee, J.)