

Court No. 3
Item 8
Sk & Ali
03.08.2022

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

CRR 152 of 2019

**Haridyeswar Roy Basunia
Vs.
Bidyut Ghosh & Anr.**

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

Mr. Hillol Saha Poddar
Ms. M. Das

...for the petitioner.

Mr. Aditishankar Chakraborty, Ld. APP
Mr. Kallol Acharjee
...for the State

The present revisional application has been filed for quashing of the proceedings being C.R.Case No. 271 of 2018, pending in the court of learned 3rd Judicial Magistrate Sadar, Cooch Behar.

The factual matrix of the case is that the opposite party No. 1 filed the complaint under Section 138 of the Negotiable Instrument Act. The learned Magistrate upon examination of the complainant on S.A. under Section 200 of the Criminal Procedure Code took cognizance and issued process against the petitioner. Being aggrieved by and dissatisfied with the said proceeding, the petitioner has filed the present revisional application.

Mr. Hillol Saha Poddar, learned advocate for the petitioner submits that the cheque that was issued and placed for encashment was never meant for satisfying any such legally enforceable debts. He further submits that the learned

Magistrate should have taken recourse to express provision of Section 202 of the Code of Criminal Procedure while issuing summons in view of the fact that the petitioner is a resident outside the territorial jurisdiction of the learned Magistrate but that has not been adhered to. In the light of his aforesaid submissions he prayed for quashing of the proceeding.

None appears on behalf of the opposite party no. 1 in spite of due service.

Mr. Aditishankar Charkaraborty, learned Additional Public Prosecutor along with Mr. Kallol Acharjee, learned advocates appearing on behalf of the State submits that the question regarding whether there was any legally enforceable debt or not are to be decided in trial and upon evidence adduced. Moreover in a proceeding under the Negotiable Instruments Act presumption under section 118 of the Act heavily weigh against the drawer unless contrary is proved. As such there being *prima facie* materials, the proceeding before the trial court should not be interdicted.

On going through order No. 4 dated 10.7.2018 of the learned Magistrate, it appears that the learned Magistrate on examination of the complainant under Section 200 of the Code took cognizance of the offence under section 138 of the Negotiable Instruments Act and issued process. Learned advocate for the petitioner has raised the contention that the learned Magistrate did not take recourse to Section 202 of the Criminal Procedure Code. The object of amendment of Section

202 of the Code, amended by the amending Act of 2005, is to ward off false complaints against such persons residing at far-off places, in order to save them from unnecessary harassment. However, it appears that the petitioner is a resident of the Dinhata within the District of Cooch Behar. Thus, it cannot be said that the petitioner is a resident outside the territorial jurisdiction of the learned Magistrate. Accordingly, the argument advanced on behalf of the petitioner does not stand to reason.

In the aforesaid backdrop, the proceeding before the trial court does not call for interference.

Accordingly, the present revisional application is dismissed.

All connected applications stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Bivas Pattanayak, J.)