

04-07-2023
Subha
Item no. 24
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 649 of 2023

with
CRAN 1 of 2023

In the matter of : Gopal Mitra.

...Petitioner.

Mr. Moyukh Mukherjee

Mr. Sarthak Mondal

...for the petitioner.

Mr. Prasenjit Mukherjee

Mr. Goutam Chakraborty

....for the opposite party no. 2.

Affidavit of service so filed be kept with the record.

In view of the issue involved in the present revisional application, the matter is finally heard out. The grievance of the present petitioner relate to the order dated 15th February, 2022 wherein the learned Magistrate was pleased to condone the delay under Section 142(b) of the Negotiable Instruments Act and was pleased to take cognizance of the offence under the provisions of Section 138 of the N. I. Act.

I have considered the submissions of Mr. Mukherjee, learned advocate appearing for the petitioner relate to the two applications under Section 142(b) of the N.I Act being taken out and the reasons which are varying in both the allegations.

Learned advocate for the petitioner has also stressed on the issue that the delay under the provisions of the N. I. Act is an integral part of the statute and the procedure incorporated is completely different from the provisions of Section 5 of the Limitation Act.

According to the learned advocate a right accrued once the period of time has expired for filing of the complaint.

Learned advocate appearing for the complainant/opposite party no. 2 on the other hand opposes the contentions advanced in the present revisional application and submits that the present revisional application was also time barred and admitted without condonation of delay.

Learned advocate submits that the grounds so assigned by the complainant and the reasons so assigned by the learned Magistrate do not leave any room for the High Court to interfere with the proceedings.

It has also been submitted that the cheque was dishonoured in the year 2019 and more than four years have passed and till date the provisions of Section 251 of the Code of Criminal Procedure are yet to be completed.

I have perused the order dated 15th February, 2022 and the reasons assigned by the learned Magistrate. I find that the present petitioner had the opportunity to address the learned Magistrate at the pre-cognizance stage when the application under Section 142(b) of the N. I. Act was heard by the learned court.

The reasons so assigned by the learned Magistrate are, prima facie, found to be justified and as such do not call for interference at this stage. However, the petitioner has emphasized on the issue of allowing the application under Section 142(b) of the N. I. Act without any medical document. If that be so at this stage I am not inclined to stall the progress of the case before the learned trial court. If the

learned trial court after Section 251 of the Code of Criminal Procedure proceeds with the trial of the case then in such situation at the stage of cross-examination it would be prerogative of the present petitioner to confront the witness that the application under Section 142(b) of the N.I Act was allowed without any medical document placed before the learned Magistrate.

With the aforesaid observations, the present revisional application being CRR 649 of 2023 and connected application being CRAN 1 of 2023 are disposed of.

It has been informed that the next date is fixed on 28th August, 2023. The learned trial court at least on the next date or within a month from the said date conclude the process under Section 251 of the Code of Criminal Procedure and expectedly thereafter progress with the trial of the case.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

