

25-01-2023
Subha
Item no.23
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 948 2021

Dwijesh Kumar Sarkar @ Dwijesh Sarkar
-versus-
Sushma Saha

Mr. Tanmoy Chowdhury
Ms. Ritoprita Ghosh

....for the petitioner.

Mr. Debajyoti Deb
Mr. Somdyuti Parekh

....for the Opposite Party.

Affidavit of service so filed be kept with the record.

The petitioner has approached this court for production of two defence witnesses being the authorized officer of Vijaya Bank, Jadavpur Branch, Kolkata and a competent officer or police personnel from the Jadavpur Police Station who would produce the relevant records of the cheque which is the subject matter of the case.

The present is a case under Section 138 of the Negotiable Instruments Act. The petitioner being an accused after the examination under Section 313 of the Code of Criminal Procedure was over, prayed for examination of two witnesses and summoning them. The production of a witness or relying upon a witness by accused is a statutory right. There are no reasons to be required. The only issue which is to be checked is that there is no unnecessary delay on the ground of availability of the defence witnesses. I find that an exhaustive application was taken up which is unwarranted. That was dealt with by the learned Magistrate as well as the Sessions Court

exercising its revisional jurisdiction. Such reasons as to why the defence witnesses would appear and the purpose for which they are asked to appear cannot be a subject matter at the pre-argument stage. The learned Magistrate has assigned reasons that the accused is attempting to dilute the complaint case. Ordinarily an accused will always try to wriggle out of the situation, but that is an argument to be considered at the stage of final arguments of the case and is a ground of acquittal or conviction. That cannot debar an accused from producing a witness in respect of the case.

Without going into the merits of the orders passed by the learned Metropolitan Magistrate, 20th Court, Calcutta and the learned revisional court in Criminal Revision No. 291 of 2019, I direct that the learned Metropolitan Magistrate, 20th Court, Calcutta will fix henceforth 15 days' time for the purposes of the schedule of this trial. In each 15 days, a date would be fixed. The defence accused be allowed to produce its witnesses. The trial of the case may be concluded preferably by 30th April, 2023. Final arguments of the case be heard by 15th May, 2023. The learned trial court will thereafter take its time to deliver the judgement.

With the aforesaid observations, the present revisional application being **CRR 948 of 2021** is **disposed of**.

Pending applications, if any, are consequently disposed of.

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]

