

Item No.18
Ct.No.34
dc.

C.R.R. 999 of 2021

In Re: An Application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure.

Mr. Rajdeep Majumder,
Mr. Moyukh Mukherjee,
Mr. Abhra Jena ... For the Petitioner.

This revisional application has been preferred challenging the further progress and continuance of Complaint Case No. CNS 31/2021 and the order dated 03.03.2021 pending before learned Metropolitan Magistrate, 19th Court, Calcutta.

Learned advocate appearing for the petitioner submits that in reply to the notice, the facts have been elaborated and there was non-performance on the part of the complainant which was known to them and in spite of the same, cheque was placed. According to the learned advocate for the petitioner, the cheque was issued for future compliance at the behest of the complainant. The complainant failed to perform its duties and as such, there was no liability on the part of the present petitioner to transmit the amount or honour the cheque for which the same was issued. Learned advocate for the petitioner also relies upon the judgement of the Hon'ble Supreme Court reported in **2021 SCC OnLine SC 325** (In Re: Expeditious Trial of Cases Under Section 138 of N.I. Act,

1881) and draws the attention of this Court to paragraph 24 of the said judgement. It has been emphasised that there has been non-compliance of Section 202 of the Code of Criminal Procedure as the accused company as well as its directors were staying and/or carrying on their business outside the territorial jurisdiction of the learned CMM, Calcutta. Non-compliance of such a provision of law which has been settled by the Hon'ble Supreme Court, according to the learned advocate, is *ex facie* bad in law and as such, the order dated 03.03.2021 issuing process so far as the petitioner is concerned should be set aside.

In spite of service, none appears for the opposite party.

I have considered the submissions advanced by the learned advocate appearing for the petitioner. The order dated 03.03.2021 issuing process so far as the petitioner and the other accused persons are concerned, reflects that the learned Magistrate has perused the petition of complaint as also the affidavit which was also filed at the instance of the complainant. The learned Magistrate also perused the original documents and after perusal, returned the same to the complainant and on being satisfied issued process. I find that an affidavit was filed at the instance of the complainant. In a complaint case of this nature, complainant himself is a witness. As such to adhere to Section 202 of the Code of Criminal Procedure, further examination of the witnesses or documents is not required in the present case in view of the fact that there are no overwhelming materials which have been placed before this Court to show that there was any

possibility to falsely implicate the accused persons by way of initiation of proceeding under Section 138 of the Negotiable Instruments Act.

On an overall assessment of the procedure so adhered to by the learned Metropolitan Magistrate, 19th Court, Calcutta, I am of the view that the requirements of Section 202 of the Code of Criminal Procedure have been adhered to by the learned Magistrate and the same do not call for any interference. So far as the other issues are concerned, the same related to question of fact and are to be decided in course of trial.

Having regard to the fact that the two directors are having their offices at Siliguri and are resident of State of Kerala, the learned Magistrate on an appropriate application will allow the accused persons to be represented through their learned advocates under Section 205 of the Code of Criminal Procedure. In case dilatory tactics are adopted by the learned advocate, the learned Magistrate would be empowered to invoke the provision under sub-section (2) of Section 205 of the Code of Criminal Procedure at the appropriate stage when the learned Magistrate thinks fit and proper.

The issue relating to facts which have been raised particularly with regard to legally enforceable debt and liability is kept open to be considered by the learned trial court in course of the trial and in the subsequent proceedings.

With the aforesaid observations, the revisional application being CRR 999 of 2021 is disposed of.

All pending connected applications, if any, are 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.)