

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1213 of 2023

**Srestha Development & Ors.
Vs.
State of West Bengal & Anr.**

**For the petitioners : Mr. Satadru Lahiri,
Mr. Shyamalendu Mondal,
Mr. Safdar Azam.**

**For the opposite
Parties : Mr. Sabyasachi Mukherjee,
Mr. Mukesh Khanna,
Mr. Mrinmay Nandy.**

Judgement on : 15.05.2023.

Bibek Chaudhuri, J.

The petitioners have approached this Court under Section 482 of the Code of Criminal Procedure praying for quashing of a criminal proceeding being C. Case No. 554/2022 under Section 138 of the Negotiable Instruments Act and all orders passed therein.

It is found from the record that in the Trial Court, the petitioners duly appeared and on the date of their appearance, they were released on bail. Subsequently, they were examined under Section 251 of the Code of Criminal Procedure and on their pleading not guilty, the trial of the case has commenced. It is in progress.

Mr. Lahiri, learned Advocate for the petitioners has placed reliance of a decision of the Hon'ble Supreme Court in ***Yogendra Pratap Singh –Vs. Savitri Pandey & Anr.*** reported in **(2014) 10 SCC 713**. Paragraph 41 of the said decision is relevant and quoted below:-

"**41.** Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the Court after the prescribed period. Now, since our answer to Question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to Question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later

stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the Court of sufficient cause. Question (ii) is answered accordingly.”

On perusal of paragraph 41 of the aforesaid report it is found that the Hon’ble Supreme Court has held that if a complaint under Section 138 of the Negotiable Instruments Act is filed at a premature stage the Court will not take cognizance of the offence and return the said complaint to the complainant with a direction to file a fresh complaint on the selfsame cause of action after the expiry of the period of limitation as stated in Section 138(b) read with Section 142 of the Negotiable Instruments Act.

The Hon’ble Supreme Court passed the said order enunciating the role of the Trial Court in case of filing of premature application. Therefore, at the stage of trial this Court is of the view that the instant revision can be disposed of directing the Trial Court to take up the issue as to whether the application under Section 138 of the Negotiable Instruments Act has been filed at a premature stage and decide the issue in accordance with law taking into account the decision of the Hon’ble Supreme Court as quoted above. If the learned Trial Judge holds that the complaint case is not maintainable on the ground of premature filing the learned Trial Court will act as per the direction of the Hon’ble Supreme Court as quoted above and give an opportunity to the petitioner to file fresh application under Section 138 of the Negotiable Instruments Act. While passing such order he shall also consider as to whether the petitioner is entitled to get the relief regarding limitation under the Limitation Act on the

ground that he diligently proceeded with wrong notion C. Case No. 554/2022.

With the above direction, the instant revision is disposed of.

The petitioner is at liberty to file such application raising the preliminary issue before the Trial Court on the basis of the observation made hereinabove.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 18.