

M/L45
03.04.2023
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C.R.R.1124 of 2021

In Re: An application under Section 482 read with 401 of the Code of Criminal Procedure, 1973;

Bijoy Kumar Paira
Versus
Shreya Maity

Mr. Satadru Lahiri,
Mr. Soumyajit Das Mahapatra.
...for the petitioner.

Mr. Masud Mallik.
...for the opposite party.

The petitioner has challenged the order dated 09.03.2021 passed by the learned Judicial Magistrate, 1st Court, Contai, Purba Medinipur in respect of C.R. Case No.49 of 2017 under Section 138 of the Negotiable Instruments Act.

Learned advocate for the petitioner drew the attention of the Court to the application filed before the learned Magistrate for the purposes of ascertaining regarding the genuinity of the contents of the cheque particularly with regard to the handwritings appearing therein both in respect of the amount as well as the words.

Learned advocate for the complainant/opposite party, on the other hand, submits that the said application was filed with a ploy to delay the proceedings which was initiated in the year 2017 and is dragged on till date.

I have considered the submissions advanced by the learned advocates for the parties as well as the stage at which the

petitioner approached this Court.

Records reflect that it was immediately after the conclusion of the evidence of P.W.1, such an application was taken out at the instance of the accused/petitioner. Learned Magistrate after considering the said petition was pleased to reject the contentions by its order dated 09.03.2021. So far as the order passed by the learned Magistrate is concerned, I do not find any illegality in the same in view of the fact that such contention which has been advanced is for the purposes of evidence in support of the defence case. The stage of Section 313 of the Code of Criminal Procedure is yet not over and, as such, the particulars relating to the defence which the accused/petitioner has taken is not clear to the court. Further, the prayers so advanced before the learned Magistrate was confusing for the learned Magistrate to send the relevant documents for the purposes of handwriting expert's opinion.

Having considered the stage of the case, I am of the opinion that the prayers so advanced is premature. The defence must first appear in the examination under Section 313 of the Code of Criminal Procedure. Learned Magistrate would assess whether such a defence is in tune with the cross-examination of the accused. Learned Magistrate may in the circumstances also allow the accused to examine himself as a witness in support of the defence case and thereafter on an appropriate application, if required, would consider the necessity of handwriting expert provided the documents so questioned appeals to the learned

Magistrate or the trial court to send it for such examination. No interference is called for at this stage.

With the aforesaid observations, CRR 1124 of 2021 is disposed of.

Pending application, if any, is 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 of all requisite formalities.

(Tirthankar Ghosh, J.)