

Form J(1)

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

Present :

The Hon'ble Justice Bibek Chaudhuri

C.R.R. 1398 of 2023

Sri Aoumitra Das

Vs.

The State of West Bengal & Anr.

**For the petitioner : Mr. Soumya Ray, Adv.
Ms. Anwesha Saha, Adv.**

Heard on : 25.04.2023.

Judgment On : 25.04.2023.

Bibek Chaudhuri, J.

The petitioner is an accused in a case under Section 138 of the Negotiable Instruments Act. The said case is pending before the learned Additional Chief Judicial Magistrate-II, Baruipur for trial. The case is pending since 2017 though the statutory requirement as well as the Apex Court's order time and again stated that a proceeding under Section 138 of the Negotiable Instrument Act is to be disposed of at the earliest. It is needless to say that a proceeding under Section 138 of the Negotiable Instruments Act is instituted when a cheque being a negotiable instrument issued by a person in favour of the drawer of the cheque is dishonoured and in spite of service of notice, the drawer of the cheque failed to repay the amount for which the cheque is issued.

Surprisingly enough, in such a proceeding under Section 138 of the Negotiable Instruments Act, the accused has prayed for directing the complainant to submit his income tax return as well as financial documents to prove the capacity of the complainant to pay loan in favour of the accused.

In a case under Section 138 of the Negotiable Instruments Act, the issue relating to capacity of the complainant cannot be in a dispute when a cheque has already been issued by the accused and it has been dishonoured. Therefore, the petitioner is debarred from raising such issue in future before the Trial court.

The petitioner has approached this Court for recalling the order dated 13th March, 2023 where warrant of arrest has been issued against the petitioner/accused.

It appears that the petitioner is already favoured with an order under Section 205 of the Code of Criminal Procedure. The learned Magistrate failed to consider that the complainant was also absent on 13th March, 2023 on which date the complainant was required to be cross-examined.

In view of such circumstances, at any rate the complainant could not have been cross-examined on 13th March, 2023. Therefore, warrant of arrest against the accused be recalled.

The accused is at liberty to be represented by his learned Advocate except on the date of his examination under Section 313 of the Code of Criminal Procedure.

Considering the fact that this is a case under Section 138 of the Negotiable Instruments Act, the learned Trial Judge is directed to dispose of the complaint case within three months from the date of communication of this order immediately.

(Bibek Chaudhuri, J.)

***Mithun De/
A.R. (Ct).
SI No.6.
D/L.***