

16.08.2023
Serial no. 3
[G.S.D]

CRR 1728 of 2022
With
CRAN 2 of 2022
CRAN 5 of 2023

In the matter of : Vivek Agarwal

... .. Petitioner

Mr. Anirban Dutta
Ms. Swati Kedia
Md. Sohaib Rauf

... For the Petitioner

Affidavit-of-service was earlier filed, and, in spite of service, the complainant/O.P. did not appear.

The records reflect that the case has reached at the stage of Section 251 of the Code of Criminal Procedure. The present application under Section 482 of the Cr.P.C. has been filed challenging the proceedings being NI Act case no. 122 of 2019 under Section 138 of the Negotiable Instruments Act, which is pending before the Learned Judicial Magistrate, 6th Court, Sealdah.

Mr. Dutta, Learned Advocate appearing for the petitioner, draws the attention of the Court to the documents particularly the statement of the bank, which reflects that approximately a sum of Rs.39 lakhs have been refunded to the complainant and the same was brought to

the notice of the complainant prior to the cheque being presented for encashment. To that effect, a letter was issued by the Learned Advocate demanding the return of the said cheque, which was in the custody of the complainant/O.P.

The Learned Advocate has submitted that there was non-compliance in respect of the agreement, which is the subject-matter of the present proceedings. The present petitioner has left no stone unturned for consideration of the same and has approached the Learned Civil Court and also lodged an FIR in respect of the cheque, which is the subject-matter of the present case.

Learned Advocate has also raised an issue in respect of non-compliance in regard the provisions under Section 202 of the Cr.P.C. and submitted that had this document been in possession of the Learned Magistrate, the Learned Magistrate would not have issued the process against the present petitioner.

I have considered the submissions advanced by the Learned Advocate.

In a case, under the provisions of N.I. Act, the parameter which are to be considered by the Learned Magistrate, mostly involves regarding the authenticity of the cheque, the statutory compliances required, the bank documents and the demand notice.

What is canvassed in this case is that there was no legally enforceable debt or liability to honour the cheque. This is a question of fact which is to be decided in course of the trial in an enquiry under Section 202 of the Cr.P.C. and it is not possible for this Court of law, at this stage, to adjudicate regarding the factum of debt or liability.

I have considered the submissions advanced by the Learned Advocate appearing for the petitioner and I find that there are factual circumstances, which finally may tilt in favour of the petitioner. But, at this stage, to appreciate the said documents, a mini trial would have to be conducted, which this Court is not empowered while exercising its jurisdiction under Section 482 of the Cr.P.C.

On assessment of the totality of the circumstances, in this case, I am of the view that for the purposes of this case, if the Learned Magistrate is of the opinion, at any stage, that the provision of Section 143A of the N.I. Act, is to be invoked, in that case, the same should not be done prior to the cross-examination of the complainant being completed.

Mr. Dutta submits that it may not be possible for the petitioner to regularly attend the day to day proceedings. In such case, the petitioner would be at liberty to take out an application under Section 205 of the Cr.P.C. and the Learned Magistrate would allow such prayer on their undertaking and

consider the same as the Learned Magistrate would deem fit and proper.

With the aforesaid observations, CRR 1728 of 2022 is disposed of.

Pending application, if any, is also disposed of.

Parties to act on a server copy of this order, duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)