

16.11.2023
Serial no. 204
[G.S.D]

CRR 1594 of 2021

In the matter of : Ramashankar

... .. Petitioner

MR. SABIR AHAMED
MR. AVIROOP BHATTACHARYA

... PETITIONER

MR. S. SINGH
MR. A. K. SINGH

... RESPONDENT

The subject-matter of the present revisional application relates to a challenge in respect of continuation of a proceeding being Complaint Case No. CS 5825 of 2021, which is pending before the Ld. Metropolitan Magistrate, 8th Court, Calcutta, in connection with a proceedings under Section 138 of the N.I. Act.

Mr. Ahmed, Id. advocate, appearing for the petitioner submits that the present case was initiated by the complaint on the issue of dishonour of a cheque for which there was no legally enforceable debt or right.

It has been contented that the subject-matter of the transaction relates to financing of a vehicle (second hand). The present petitioner has neither received the vehicle from the owner of the car as, according to the petitioner, the

owner did not receive any amount from the finance company.

Consequently, the cheque which was in the custody of the finance company was presented for encashment without any liability and, as such, the petitioner has been placed in a precarious condition on two counts: firstly, not receiving the vehicle for which he has claimed for finance from the complainant/o.p. Secondly, he has not received the vehicle because the owner has claimed that he has not received the finance from the finance company.

To that effect, the petitioner complained to the respective police authorities in the State of Uttar Pradesh, for which, First Information Report was registered.

According to the petitioner, charge-sheet, in the meantime, has already been submitted after conclusion of the investigation.

Ld. advocate also adds that such complaint was lodged prior to the present case being initiated and cognizance was taken by the Id. Magistrate in respect of the alleged offence under Section 138 of the N.I. Act.

I have considered the submissions advanced by the petitioner. The documents which have been annexed relate to the letter of complaint addressed to the jurisdictional police authority at Uttar Pradesh for initiation of the FIR.

So far as the claim relating to 'legally enforceable debt' is considered, which the petitioner is disowning, I am of the opinion that the same is a question of fact and cannot be summarily adjudicated to be true or false, correct and/or incorrect, for arriving at a finding that the finance company has mala fide presented the cheque for encashment without disbursing any amount.

However, the petitioner would be at liberty to adduce such evidence in course of the trial for rebutting the prosecution's case.

At this stage, assessment and/or adjudication on the issues so canvassed are completely premature and, as such, no interference is made.

With the aforesaid observations, CRR 1594 of 2021 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 at 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.)

