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19.04.2023
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C.R.R. No.1731 of 2021
With
CRAN 5 of 2022

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

Sutanu Biswas
Versus
M/s. Hinduja Leyland Finance Limited and another

Mr. Anindya Bose,
Mr. Asok Banerjee,
Mr. Diptendu Mandal,
Mr. Mridul Biswas.
...for the petitioner.

Mr. Abhra Mukherejee,
Ms. Manisha Sharma.
...for the State.

Learned advocate appearing for the petitioner challenges the continuance of the proceedings in C.S. No.0038229 of 2015 under Section 138 of the Negotiable Instrument Act pending in the court of learned Metropolitan Magistrate, 18th Court, Calcutta.

Learned advocate submits that the complainant is the company and the person who was representing the company did not aver in the petition of complaint that he has personal knowledge regarding the transactions for which the cheque was issued. To that extent, learned advocate relies upon the decision in **A.C. Narayanan Vs. State of Maharashtra and another** reported in **(2014) 11 SCC 790**. Emphasis has been laid on the issue that if a complaint is filed by a person who does not have personal knowledge regarding the case, then in that case the proceedings under Section 138 of the

Negotiable Instruments Act is not maintainable.

I have considered the judgment and the stage at which the application under Section 482 of the Code of Criminal Procedure has been filed before this Court. I have considered the contentions and/or averments made in the petition of complaint.

It has been averred that the complaint has been filed by the Constituted Attorney, namely, one Monodip Dasgupta. The ratio of the judgment of the Hon'ble Supreme Court did not lay down that an application is barred in case it is filed by a person who does not have personal knowledge regarding the case when he is representing the company.

Different circumstances may arise at the time of trial when the complainant may be substituted or an appropriate person may be placed on the dock for deposing who has personal knowledge regarding the issues which gave rise to the proceedings under Section 138 of the Negotiable Instruments Act.

The stage at which the petitioner has approached this Court is a premature stage. Petitioner would be at liberty to assail the point canvassed at the appropriate stage of the proceedings and at the stage of final arguments of the case. No interference is called for at this stage.

With the aforesaid observations, CRR 1731 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.)