

12.06.2023

Item No.5
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 2617 of 2022

In the matter of : **Sifa Enterprises & Anr.** ... Petitioners.

Mr. Niladri Sekhar Ghosh,
Mr. Mujibar Ali Naskar,
Mr. Sourav Mondal ... For the Petitioners.

Mr. Koushik Kundu ... For the Opposite Party.

The petitioners have challenged the proceedings being Complaint Case No. CS/33226 of 2022 wherein the learned jurisdictional court was pleased to issue process under Section 138 of the Negotiable Instruments Act. The core issue of the learned advocate appearing for the petitioners is that the date on which the cheque was presented for encashment, no liability existed on the said date. The learned advocate submits that in the meantime, there has been arbitration award being passed. The cheque which has been issued was on the basis of an agreement of loan which was recalled. As such, there was no liability of the present petitioners for honouring the cheque concerned. These are the question of facts to be considered by the learned trial court in course of trial. The petitioners are granted liberty to take up the points at the stage of Section 251 of the Code of Criminal Procedure.

Learned advocate for the petitioners submits that warrant of arrest has been issued in the month of March 2023. The said warrant be considered to be aailable warrant. The petitioners will surrender on the next date

concerned and the learned court will release the petitioners on bail.

Learned advocate for the opposite party is present and opposes such application.

As directed above, the learned Magistrate would first give an opportunity to the petitioners at the stage under Section 251 of the Code of Criminal Procedure and thereafter, proceed with the trial of the case in accordance with law by adhering to the spirit of the legislature incorporated in the provisions of the Negotiable Instruments Act.

With the aforesaid observations, the revisional application being CRR 2617 of 2022 is disposed of.

Pending connected application, if any, is consequently disposed of.

All concerned 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 with all requisite formalities.

(Tirthankar Ghosh, J.)