

10.08.2023
Serial no. 40
[G.S.D]

CRR 2862 of 2023

In the matter of : Mukesh M. Mehta & Anr.

... .. Petitioners

Mr. Ankit Agarwala
Ms. A. Mukherjee

... For the Petitioners

The petitioners have challenged the continuance of the proceedings pending before the Learned Metropolitan Magistrate, 16th Court, Calcutta in CS No. 15477 of 2023.

The main contention of the petitioners are that they retired much prior to the cause of action arose. There are documents to the fact that they retired from the partnership firm.

Learned Advocate submits that so far as the documents relating to their retirement/resignation from the partnership firm is concerned, the same is impeccable and it is, *inter se*, between the partners, to which the complainant has no locus to challenge.

I have considered the submissions of Learned Advocate for the petitioners and also taken into account the allegations made in the petition of complaint. The documents which are the foundation of claiming innocence

at the instance of the petitioners, do require scrutiny regarding the genuinity.

This Court, while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, will not entertain the issue relating to the facts based upon the documents, which require scrutiny. The proceedings before the Learned Magistrate are at pre- S. 251 Cr.P.C.

Accordingly, the petitioners are granted liberty to canvass such points at the stage of Section 251 of the Code of Criminal Procedure, if required, by taking out an appropriate application.

The Learned Court, *in seisin*, of the matter, will take into account the documents, which have been placed on record and pass his/her order in accordance with law prior to entering the trial of the proceedings.

Since the petitioners are the permanent residents of Mumbai, having regard to the nature of the proceedings, which are based on documents, the physical presence of the petitioners may not be insisted until and unless the Learned Magistrate thinks that without physical presence of the petitioners, the present proceedings cannot progress.

The petitioners would obviously give undertaking, as required under Section 205/317 of the Cr.P.C. before the Learned Magistrate.

With the above observations, CRR 2862 of 2023 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.)