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14.08.2023
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C.R.R.2948 of 2023

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

Mr. Ravi Sanghi and another
Versus
The State of West Bengal and another

Mr. Y.J. Dastoor
Mr. Samrat Goswami
Mr. Anupam Some
Ms. Samira Grewal.
...for the petitioners.

Mr. Apalak Basu
Mr. Shounak Mondal
Mr. Cedric Fernandez.
...for the opposite party no.2.

Mr. Dastoor, learned senior advocate appearing for the petitioners challenge the continuance of Complaint Case No.301 of 2022 dated 02.02.2022 under Section 138 of the Negotiable Instruments Act pending before the learned Judicial Magistrate, 8th Court, Alipore. The first contention taken up by Mr. Dastoor is that the petitioners did not have an opportunity to address on the issue relating to condonation of delay for filing the complaint when the cognizance was taken by the learned CJM, 24 Parganas (South) by its order dated 02.02.2022.

Learned senior advocate submits that this is not a regular single case where the complainant has alleged regarding the delay having occurred within the schedule fixed by the Hon'ble

Supreme Court but the advantage has been claimed by the complainant in spite of the fact that 17 other complaint cases were filed by the same complainant. The next point which has been canvassed by the learned senior advocate relates to service of demand notice. Learned senior advocate by drawing the attention of the Court to paragraph 13 of the petition of complaint submits that rajat.jain@sanghicement.com and Jainik.patel@sanghicement.com were used for sending the demand notice. However, none of the persons to whom these mail accounts operating are existing in this case are regular mail accounts of the company, the Managing Director or other accused who have been implicated in connection with the instant case. Learned senior advocate also submits that the averments in the complaint are incomplete warranting interference in any further continuance of the proceedings under the provisions of the Negotiable Instruments Act.

Mr. Apalak Basu, learned advocate appearing on behalf of the complainant/opposite party no.2, on the other hand, disputes the contentions and submits that the complaint was filed within the period fixed by the Hon'ble Supreme Court which was taken into account by the learned CJM and by a speaking order, the learned CJM while taking cognizance was of the opinion that there was no requirement for condoning any delay as the complaint was filed according to the time period or the extended schedule fixed by the Hon'ble Supreme Court during the pandemic. So far as the other issue is concerned, learned advocate for the complainant/opposite party no.2 submits that those were known mail accounts to the

complainant where the communication has been made.

To which the learned senior advocate submits that those employees were connected when the agreements were prepared initially but when the fresh agreements were prepared they were never the part and parcel of the same and as such, they are not acquainted or not necessary parties with the litigation who could have responded to the statutory notice as required under the provisions of the Negotiable Instruments Act.

Be that as it may, so far as the documents are concerned at this stage the order dated 02.02.2022 relates to mixed question of fact and law in view of the submissions advanced by Mr. Dastoor that knowingly after filing 17 complaints under the provisions of Negotiable Instruments Act this case was belatedly filed and there was no reason to entertain the complaint beyond the statutory period prescribed without hearing the accused petitioners. So far as the other issue is concerned regarding the mail addresses or the addresses to which the demand notice was sent as has been averred in paragraph 13 of the complaint at this stage, there is nothing on record to show that there were other mail addresses through which the parties communicated amongst themselves when there were transactions or other communications were exchanged. The same is within the personal knowledge of the petitioners which are to be adduced in course of trial.

I have considered the issues so canvassed and I am of the opinion that this is not a fit case to interfere for holding that no offence under the provisions of Section 138 of the Negotiable

Instruments Act has been made out. The petitioners would be at liberty to canvass the present issues including all the issues canvassed in the revisional application at the appropriate stage of the trial.

With the aforesaid observations, CRR 2948 of 2023 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.)