

13.03.2023
Ct. No.34
S/L No.21
KS

**C.R.R. 2601 of 2021
With
IA No. CRAN 2 of 2022
Sharmila Murarka
-Vs.-
The State of West Bengal & Anr.**

Mr. Pawan Kumar Gupta
Ms. Sofia Nesar
Ms. Santa Bagaria
Mr. Santanu Sett

..... For the Petitioner

Mr. Soumyajit Das Mahapatra
Mr. Supriyo Das

.....For the O.P.

The revisional application was preferred challenging the order dated 15.11.2021 passed by the learned Metropolitan Magistrate, 9th Court, Calcutta in C. Case No.C/867/2006 under Section 138 of the Negotiable Instruments Act wherein the learned Magistrate dismissed the petition dated 17.02.2021.

Learned advocate appearing for the petitioner has drawn attention of this Court to the letter dated 09.11.2007 which was relied upon by the complainant in the case. According to the learned advocate the contents of the said letter although being same before the Criminal Court and the Civil Court, the front and the placement of the words and the signature of the accused would raise a doubt regarding the authenticity of the document so placed. It has been submitted that the said document is the foundation of the factum of legally enforceable debt or liability for issuance of the cheque which is the subject-matter of the case under Section 138 of the Negotiable

Instruments Act. The second document was obtained from the Civil Court and, as such, the present petitioner had no other option but to prefer an application under Section 311 of the Code of Criminal Procedure praying for forensic/hand writing expert examination in respect of the said document which has been marked as “Exhibit – 1” by the prosecution and “Exhibit – A” series by the defence in examination in chief of DW1 (who is the petitioner before this Court). The said document was also marked as Annexure – “B” to the application under Section 311 of the Code of Criminal Procedure.

Records reflect that the Examination in Chief and cross-examination of DW1 was over on 08.02.2019. Thereafter another witness was examined by the defence namely, Aditya Roy who is the Deputy Branch Manager, Ballygunge Circular Road Branch. The examination of this defence witness was over on 7th March, 2019. Records reflect that the learned Trial Court was pleased to close defence evidence on 07.03.2019 and arguments were fixed by the learned Trial Court on 15.05.2019. On various issues there were adjournments on 15.05.2019, 22.07.2019 and 12.09.2019. An application under Section 205 of the Code of Criminal Procedure was filed on behalf of the present petitioner over which arguments continued on 26.11.2019, 16.01.2020, 17.03.2020, 16.12.2020, 27.01.2021 and on 17.02.2021 the present application under Section 311 of the Code of Criminal Procedure was preferred with the prayer as referred to above.

I have also perused the Examination in Chief of the present petitioner. Such issue regarding the document being, ‘Exhibit – 1’ or ‘Exhibit – A’ series were never challenged in close proximity of time after the DW1 or DW2 was examined. Number of reasons are being assigned by

the learned advocate appearing for the petitioner. The complaint case was initiated in the year 2006 and even in 2023 a proceeding under Section 138 could not be concluded at least at the level of the trial.

Having regard to the belated stage at which the application under Section 311 of the Code of Criminal Procedure was filed before the learned Metropolitan Magistrate, 9th Court, Calcutta, I am of the opinion that the same do not call for any interference by this Court. The Trial Court is directed to conclude the arguments by 15th April, 2023 and the judgment be delivered by 30th April, 2023.

With this observation, the revisional application being, C.R.R. 2601 of 2021 is hereby dismissed.

Pending applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records so that the same is available before the learned Metropolitan Magistrate, 9th Court, Calcutta by 20.03.2023.

Any observations made by this Court is for the limited purpose of deciding the present revisional application and the learned Trial Court will not be influenced by any observation made by this Court while deciding the merits of the proceeding under Section 138 of the Negotiable Instruments Act.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)