

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. - 2804 of 2018

IN THE MATTER OF

Arnab Banerjee.

Vs.

Samir Saha.

**For the petitioner : Mr. Deepak Prahladka, Adv.,
Ms. Reshmi Khatun, Adv.**

**For the opposite Party No. 2 : Mr. Moyukh Mukherjee, Adv.,
Mr. Sarthak Mondal, Adv.**

Judgment on : 02.02.2023

Subhendu Samanta, J.

This is an application u/s 482 of the Criminal Procedure Code preferred against judgment dated July 2018 passed by the Learned Additional Sessions Judge Fast track Court No. (ii) Calcutta in criminal revision No. 304 of 2017 filed by the petitioner against the order dated 21st September 2017 passed by the Learned Metropolitan Magistrate 6th Court Calcutta in a complaint case No. C- 449/2013 convicting the present petitioner for having committed an offence punishable u/s 138 of Negotiable Instrument Act and sentencing him to pay

compensation of Rs. 2,50,000/- to the complainant in default to suffer S.I for three months.

The brief fact of the instant revision is that the present respondent filed a complaint case u/s 138 of N.I Act before the Learned CMM Calcutta thereafter, the same was transferred to Learned M.M. 6th Court Calcutta for disposal. A cheque was issued by the present petitioner amount to Rs. 1,48,000/- to the respondent which was dishonoured and hence the complaint was initiated. The proceeding was started before the Learned M.M. 6th Court and the evidence in chief of the respondent was filed. He was cross examined in part by the Learned Advocate of the present petitioner and the cross examined could not concluded. However, Learned Magistrate refuses to grant further adjournment for cross examination and close his evidence. Thereafter, the petitioner was examined u/s 313 Cr.P.C. After hearing argument for both the parties Learned Magistrate convicted the present petitioner for having committed an offence punishable u/s 138 of N.I. Act and sentenced him to compensation of Rs. 2,50,000/- in default to suffer simple imprisonment for three months. Against the said judgment the petitioner filed one criminal revision being No. 304 of 2017 before the Learned Chief Judge, City Sessions Court, Calcutta. The revision was heard by the Learned Sessions Judge, Fast Track 2nd Court Calcutta who passed the impugned judgment by dismissing the criminal revision.

Hence this appeal.

Learned Advocate for the petitioner frankly submits that as per the direction of this Hon'ble Court. He has paid the entire cheque amount to the respondent. He further submitted before this court that the reasonable opportunity was not given to the

present petitioner to cross examine the P.W- 1. He again pointed out that, if the P.W.-1 was sufficiently cross examined the order of the Learned Magistrate would be otherwise. He again pointed out that there are sufficient materials to brought before the Learned Magistrate through the mouth of the P.W.-1. He further pointed out to elicit the truth the present petitioner may be allowed to cross examine the respondent for a single day. He against pointed out that he has already deposited the entire cheque amount, so no injury would be caused upon the respondent if the present petitioner was allowed an opportunity to cross examine the P.W.-1. It is the submission of the petitioner that, one litigant shall not be suffered for the conduct of a lawyer.

Learned Advocate appearing on behalf of the respondent raised on objection. He submitted that several opportunities were given to the petitioner/accused to cross examine the respondent. It would be revealed from the LCR that the Learned Advocate for the present petitioner cross examined the respondent for two days. Thereafter, he prayed for adjournments. He again pointed out that Learned Magistrate without finding no other alternative close evidence P.W.-1 and fixed the date for examination of the accused/petitioner u/s 313 Cr.P.C. He again argued that there are scope for the present petitioner u/s 311 Cr.P.C. to adduce his evidence but he had not avail the opportunity. He also appeared before the Learned Magistrate for recording his statement u/s 313 Cr.P.C. No explanation was given by the present petitioner/accused during the course of recording statement u/s 313 Cr.P.C. regarding the issuance of alleged cheque. He again pointed out that the Learned Magistrate has specifically observed that as the order for closing of evidence of P.W- 1 was not challenged by the present petitioner/accused, the same cannot be revive at this later stage.

Heard, the Learned Advocates perused the certified copy of the impugned order, I have also perused the certified copy of order passed by the Learned Magistrate in Case No. C/449 of 2013.

This Court is exercising its revisional jurisdiction. During exercising this power the court is to look into the impropriety and illegality of the impugned judgment passed by the Learned Additional Sessions Judge, Fast Track 2nd Court Calcutta affirming the judgment of conviction passed by the Learned Metropolitan Magistrate 6th Court Calcutta. No illegality or impropriety is found in the said judgments. The Learned Advocate for the petitioner also not raised any illegality in the impugned judgment. It is only submitted by the Learned Advocate for the petitioner to award him an opportunity so that he can cross examine the P.W 1 further. It appears from the LCR that the P.W 1 was cross examined by the Learned Advocate for the petitioner for two days. Thereafter an adjournment was sought for by the Learned Advocate for the petitioner/ accused and such adjournment was allowed for more than 11 times by the Learned Magistrate. Thereafter, the Learned Magistrate finding no other alternative close the evidence of P.W 1 and posted the dates for examination of the accused u/s 313 Cr.P.C. It further appears that, accused/petitioner appeared before the Learned Magistrate consequently, he was well aware at that time regarding order of closing the evidence of P.W. 1 consequently, misconduct/misinstruction of Learned Advocate does not arise.

By virtue of filing of this instant criminal revision the present petitioner actually wanted to set aside the order passed by the Learned Magistrate closing the evidence of P.W 1. It is true that the present petitioner/ accused did not raise this

question at the time of his examination u/s 313 Cr.P.C and he also not file any application for recalling any witness u/s 311 of the Cr.P.C.

Thus in my view the petitioner/ accused has lost his opportunity to re-call the P.W. 1 during appropriate time. Further more, if the required opportunity is given to the petitioner to further examine the P.W 1, the proceeding would be initiated de-novo; which is not permitted in the facts and circumstances of this case.

Considering the same I find it no justification to entertain the prayer of the petitioner in this later stage.

In result thereof the instant criminal revision is devoid of merit and it is liable to be dismissed.

CRR dismissed.

Connected pending CRAN applications if any, are also disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)