

25-08-2023
Item no.15
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR No.3103 of 2023
AEC Infrastructure Services & Ors.
-vs-
The State of West Bengal & Anr.

Ms. Arundhati Banerjee
Ms. Kaustav Banerjee
Ms. Ria Kundu

...for the petitioners

The petitioners are aggrieved by the fact that in spite of no dues remaining, the complainant has used a cheque in his possession and foisted a criminal case upon the three petitioners – the first one being the partnership firm and the rest two are accused persons being the partners of the firm.

Learned advocate representing the petitioners submits that there has been suppression as there was no reply to the demand notice which narrated the details regarding no-liability being made out so far as the cheque which was in possession of the complainant is concerned. It has also been contended that there has been no compliance of section 202 CrPC.

I have considered the submission made on behalf of the petitioners. So far as the issue relating to no-liability arising in respect of the cheque in possession of the complainant is concerned, the same is a question of fact as it is the onus of the party to rebut in course of the trial regarding the legally enforceable debt or liability.

So far as the question of section 202 CrPC is concerned, the same principle as it applies to the Indian Penal Code offence would not apply under the provisions of the Negotiable Instruments Act as the provision of section 202 CrPC was incorporated with the object that people staying at far off places are not implicated as accused and consequently harassment is caused to them. Under the provisions of

the Negotiable Instruments Act, the initial issuance itself is an exhaustive process which includes within its ambit an inquiry already conducted by the learned Magistrate as the original cheque, the bank return memo, the demand notice and other attending materials are first to be considered by the court before issuing the process.

That being so, I am of the view that the issue relating to section 202 CrPC has no substance to be interfered with.

However, the petitioners will be at liberty to definitely rebut the offence so far as the first point is concerned regarding there being no legally enforceable debt or liability which the petitioners would definitely exercise their options in course of trial by way of cross-examination, at the stage of section 313 CrPC and by way of adducing defence witness, if any.

With the observations as above, CRR No.3103 of 2023 stands disposed of.

Pending application, if any, stands also disposed of.

Parties are to act on the server copy of this order duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

[Tirthankar Ghosh, JJ]

