

31-08-2023
Subha
Item no. 15
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 3271 of 2023

Priti Anil Khandelwal
-versus-
State of West Bengal & Anr.

Mr. Debabrata Acharya
Mr. Sital Samanta
....for the petitioner.

Learned advocate for the petitioner has prayed for interfering with the proceedings arising out of CS/23153 of 2021.

Learned advocate submits that the present case under Section 138 of the N. I. Act fails to make out any legally enforceable debt or liability for the prosecution of the case to continue.

Learned advocate submits that the cheque was issued as a security towards home loan and under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 under which the proceedings are pending and more so the asset has already taken over by the Axis Bank.

Learned advocate submits that after default in respect of two of the EMIs because of the account being frozen/attached by the Enforcement Directorate, Mumbai, the bank authorities behaved in an unnatural manner and recalled the loan thereby utilizing the cheque which was kept as security demanding whole of the amount of the loan which was never the purport of the loan agreement.

I have considered the submissions of the learned advocate

for the petitioner and particularly the facts relating to the series of cases pending which led to the petitioner being a defaulter towards the home loan account maintained with the Axis Bank. However, all these series of events are question of facts, which are to be used for rebutting the complainant or its witnesses in course of the trial and cannot be summarily adjudicated by this court while deciding a proceeding under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner is granted liberty to canvass such points at the appropriate stage of the case before the learned trial court.

An additional prayer has been advanced on behalf of the petitioner that she being a lady and staying at Mumbai and is suffering from ailments, it may not be possible for her to attend the day-to-day proceedings of the court before the learned Metropolitan Magistrate, 3rd court, Calcutta.

In case the petitioner is represented through a lawyer with proper and usual undertakings, the learned court would dispense with her personal appearance in respect of the day-to-day proceedings until and unless the learned trial court feels that the trial of the case cannot proceed without her physical appearance.

With the aforesaid observations, the revisional application being CRR 3271 of 2023 is disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

