

17.11.2023
Item No.268
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 3875 of 2023

In the matter of : **Enamul Haque alias Enamul Hoque**
... Petitioner.

Mr. Mohinoor Rahaman ... For the Petitioner.

Learned advocate appearing for the petitioner submits that the complainant/opposite party no.2 initiated a case under the relevant provisions of the Indian Penal Code and thereafter also filed a separate case under the provisions of Section 138 of the Negotiable Instruments Act. According to the learned advocate, the complainant/opposite party no.2 is a finance company and they were having custody of the cheque. The said finance company has recovered the vehicle and also instituted the present case under Section 138 of the Negotiable Instruments Act because of the cheque being in their custody. Learned advocate submits that there are no dues and the petitioner in course of holding the vehicle had paid regular EMI towards the loan.

I have considered the submissions of the learned advocate appearing for the petitioner and am of the opinion that the same are exclusively question of facts which are to be gone into at the stage of trial. There may be facts which are to be assessed so far as the existence of any legally enforceable debt or liability is concerned. However, the same is to be assessed after the trial is over. The petitioner is at liberty to adduce evidence in respect of the arguments so canvassed at the stage of cross-examination of the

prosecution witnesses, at the stage of defence witness and obviously argue his case on such issues if he is able to adduce such evidence at the stage of conclusion of the trial. No interference at this initial stage can be made by invoking the provisions of Section 482 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 3875 of 2023 is disposed of.

Pending connected application, if any, is consequently disposed of.

All concerned 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 with all requisite formalities.

(Tirthankar Ghosh, J.)