

10.5.2023
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Ct. no. 3
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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRR 96 of 2023

In the matter of : Bittu Paul

...petitioner

Mr. Shibaji Kumar Das ...for the Petitioner

Mr. Sandip Mondal
Mr. Abhilash Mittal ... for the opposite party

This is an application under Section 482 read with Section 401 of the Code of Criminal Procedure against the order no. 22 dated 15th March, 2023 passed by the learned Judicial Magistrate, 4th Court, Siliguri, Darjeeling in C.R. case no. 597 of 2018 which is a proceeding under Section 138 read with Section 142 of the Negotiable Instrument Act, 1881.

The petitioner contended that the opposite party herein filed a complaint against the petitioner under the provision of Section 200 of the Code of Criminal Procedure alleging commission of offence under Section 138 of the Negotiable Instrument Act, 1881. The allegation is that during business transaction, the petitioner herein had handed over a cheque to the petitioner towards the price of goods. When said cheque was presented by the opposite party to his banker, it got dishonoured. Thereafter, the opposite party herein has made several requests to make the payment but he did not pay any

heed to such request and as such the opposite party has been compelled to initiate the said complaint case. In the said proceeding, the opposite party herein as PW 1 was examined on behalf of complainant and the documents were marked as exhibit on 21st September, 2019 and the next date was fixed on 10th February, 2020 for cross-examination of said witness by the petitioner/accused and thereafter from 10th February, 2020 till 19th March, 2022 the trial of the said case could not proceed firstly, on account of Covid-19 Pandemic and thereafter on the account that the trial court was on leave or that there was resolution of passing no adverse order by the local bar which is evident from the order sheet. In fact, it is evident from the order that the cross-examination of PW 1 was done in part on 4th June, 2022 and next date for further cross-examination was fixed on 17th September, 2022 but on that day, due to resolution taken by the bar, the hearing of the said case was adjourned till 22nd December, 2022, when the opposite party herein was absent and prayed for time and the court below was pleased to fix the next date for hearing on 15th March, 2023. On 15th March, 2023, the complainant was present but the learned counsel for the petitioner herein filed an application for adjournment and the court below by the impugned order, was pleased to close the cross-examination of PW 1 by petitioner herein with the observation that the petitioner herein in spite of getting several opportunities, failed

to cross examine the witness and accordingly, the next date was fixed on 17th June, 2023 for further evidence if any.

Learned counsel for the petitioner submits that the court below has erred both in law and in fact and has adjudged the entire case from a wrong angle. The court below failed to appreciate that the examination-in-chief of PW 1 is suffering from glaring and major contradictions which seriously hit the root of the prosecution case and as such the PW 1 is required to be cross examined by the petitioner herein. Accordingly, he has prayed for setting aside the order impugned and to give him an opportunity to cross examine the witness on behalf of the petitioner.

Learned counsel for the opposite party raised strong objection contending that the order impugned itself suggests that in spite of getting several opportunities, the petitioner failed to cross examine the PW 1 and as such he has already misused his liberty to cross examine the witness and the sole intention of the petitioner herein is to drag the proceeding where the statute has mandated for a time limit for disposal of such cases by adopting summary procedure.

Having considered the facts and circumstances of the case and that the statute provides time limit for the disposal of such cases, let CRR 96 of 2023 be disposed of with a direction that on the next date i.e. on 17.6.2023 the petition will conclude the cross-examination of PW 1 without fail and if due

to any unavailable circumstances the court could not function or for any other reason it could not be concluded on that day then such cross-examination of PW 1 must be concluded on the very next working day without seeking any further adjournment, in default, the order impugned will survive. In view of the mandate about timely disposal of such cases given in the Act, the court below is further directed to make every endeavour to dispose of the entire proceeding preferably within a period of twelve weeks from 17.6.2023 without granting any unnecessary adjournment to either of the parties.

Accordingly, CRR 96 of 2023 is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)