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September 29, 2023.
GSD

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRR 173 OF 2022

In the matter of: M/s. B.M. Construction & Anr.

.... Petitioners

Mr. Debabrata Dhar
Mr. Ankan Mitra

... for the petitioners

Ms. Suman Sehanabis
Mr. Salok Sah

... For the opposite party

The revisinal application was preferred challenging the continuation of CR Case No. 586 of 2019 including the order dated 16.8.2019 passed by the Id. CJM, Cooch Behar subsequently transferred before the Id. JM 3rd Court, Sadar, Cooch Behar.

The issues canvassed by the Id. Advocate appearing for the petitioner is that no demand notice was served; there is a delay in preferring the complainant; in spite of the same being time barred, the Id. Magistrate took cognizance of the same; and, also the factum that affidavit under Section 145 of the N.I. Act was not filed at the time the complaint was filed before the Id. Magistrate and in spite of that cognizance has been taken.

So far as the first issue is concerned, at paragraph 9 of the petition of complaint, there is a postal endorsement "door was locked and intimation served".

Having considered the said intimation, I am of the view that if postal endorsement is referred for the purposes of initiation of the case, the issue which has been canvassed by the Id. Advocate for the complainant that the postal authorities should wait for at least seven days, cannot be a ground for which the complainant who has lost his/her money, would be made liable for that.

So far as the second issue is concerned, the period beyond which the cognizance has been taken by the Id. Magistrate, the Id. Magistrate submits that since the notice was served on 1st of July, 2019, the same is made beyond the time and the order passed dated 16.8.2019 taking cognizance of the petitioner, is also beyond the period of limitation.

Having regard to the computation, I find that the last date for filing could have been, if it is strictly calculated, on 15th of August, 2019; the same being the holiday; on the next date, the complaint was filed. As such, the complaint was filed well within the time of limitation at the instance of the complainant.

So far as the issue relating to Affidavit is concerned, I find that prior to issuance of process, Affidavit-in-chief was filed before the jurisdictional court, i.e. the Id. JM, 3rd Court, Sadar, Cooch Behar, wherein the Id. Magistrate after recording the presence of the complainant and perusing the materials on record was pleased to issue the process.

There must be a difference in a case under Section 138 of the N.I. Act while taking cognizance of the offence and while issuing process against the accused persons. At the

stage of taking cognizance of the offence vide order dated 16.8.2019, the Id. Magistrate has recorded that copies of the documents have been filed which was perused and thereafter cognizance has been taken.

Having considered the issues so canvassed, I am of the opinion that the revisional application do not have any merit to be kept pending further before this court and the case, having been filed in the year 2019, must proceed in accordance with the spirit of the legislature.

No interference is called for in this revisional application.

With the aforesaid observations, CRR 173 of 2022 is dismissed.

Pending application, if any, is also disposed of.

The Id. Magistrate is directed to fix at least one date in a month for the purposes of the present complaint case so that the trial of the case can be taken to its logical conclusion within a reasonable period of time.

Parties shall act on the server copy of this order, duly collected from the official website of the Hon'ble High Court, Calcutta.

(Tirthankar Ghosh, J.)