

23.02.2024
Item No.44
BR

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

CRR 1896 of 2021

Kamlesh Agarwal
-vs-
Smt. Shalini Agarwal

Nobody appears on behalf of either of the parties. Even on earlier occasion no one represented the petitioner. No accommodation sought for.

This case is pertains to year 2021.

The petitioner being an accused filed this revisional application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 seeking quashing of proceedings in connection with complaint case being CN-29/2020 (Smt. Shalini Agarwal –vs- Kamlesh Agarwal) under Section 138 of the Negotiable Instruments Act, 1881 as amended upto date pending before the learned Court of Metropolitan Magistrate, 11th Court, Calcutta.

The brief facts of the instant case is relevant for the purpose of disposal of this case on merits and to avoid further delay as under:

It is the allegation of the complainant that the petitioner/accused person approached the complainant and deceptibly

represented himself as a reputed businessman with high goodwill and in pursuance of the request made by the accused the complainant gave an accommodation loan to the tune of Rs. 75,00,000/- only to the accused person on 2nd April, 2015 for 90 days along with interest. For repayment of said loan accused person issued a cheque bearing No. 002106 dated 1st August, 2019 for Rs. 70,00,000/- only drawn on ICICI Bank, Chowringhee Branch, Kolkata. The said cheque was deposited to the bank of accused persons, namely, IDBI Bank Limited, Girish Park, Kolkata on 23.10.2019.

The said cheque was dishonoured for non-payment by the banker's of the accused with remark "Funds Insufficient" and the said report was received by the complainant on 25.10.2019. After receiving the said intimation from the bank the complainant issued a demand notice dated 22.11.2019 under Section 138 of the Negotiable Instruments Act, 1881 as amended therein to the accused intimating about dishonour of cheque and further demanded to pay the said amount within 15 days from the date of receipt of the demand notice and the said demand notice was received by the present petitioner/accused on 25.11.2019.

It is the further contention of the petitioner that petitioner has sent a reply

dated 3rd December, 2019 through his learned advocate against the said demand notice. However, the complainant has initiated a criminal case under Section 138 of the Negotiable Instrument Act, 1881 and amendment therein due to non-payment of cheque amount. Accordingly, the case came up before this Court for disposal.

Upon perusal of the application along with annexures thereto and impugned order dated 1st March, 2021, it appears that the cheque was bounced as remark 'insufficient of fund'. Demand notice was served within the stipulated time as prescribed under the Act. But in spite of expiry of the date, the petitioner did not pay the amount, which was issued through cheque. Accordingly, the complainant has filed an application under Section 138 of the N.I. Act and the learned Court below upon perusal of the entire materials took cognizance offence as alleged and issued process. It further appears from the order sheet that the present petitioner appeared and obtained bail from the Court below. Finally a date was fixed on 1st March, 2021 and on that date the learned Magistrate has allowed an application filed by the petitioner under Section 205 of the Criminal Procedure Code for representing the accused before the learned Court below through learned counsel day to day proceeding after dispensation of

personal appearance. The learned Court below allowed the said application and permitted to represent him through learned advocate under Section 205 of the Criminal Procedure Code and material substance was read over and explained in Bengali language containing the allegations of the offences punishable under Section 138 of the N.I. Act to which the accused pleaded not guilty by saying “Ami Nirdosh’ and claimed to be tried.

Under the above facts and circumstances, this Court does not find any illegality or perversity in passing such order by the Metropolitan Magistrate. It further appears from the entire facts that the complainant has maintained and followed all the legal provision of Section 138 of the N.I. Act.

Consequently, the instant revisional application being No. CRR 1896 of 2021 is dismissed without any order as to costs. Interim order, if any, be vacated.

Let a copy of this order be communicated to the learned Court below for information.

Urgent xerox certified copy of this order, if applied for, be given to the learned advocate for the parties on usual undertakings.

(Ajay Kumar Gupta , J.)