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16.05.2024
Ct. No.3
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**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction
Appellate Side**

CRR No. 7 of 2021

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CRAN 1 of 2021

SAILENDRA KUMAR MISHRA
-VS-
THE STATE OF WEST BENGAL AND ORS

Mr. P. Ghosh, Adv.
Mr. P. Biswas, Adv.
Mr. Sukanta Ghosh, Adv.
Mr. Arijit Ghosh, Adv.
Mrs. Swarnali Ghosh, Adv.

...for the petitioner

Mr. Nilay Chakraborty, Ld. APP
Mr. Ujjal Luksom, Adv.

...for the State

Mr. P. Ghosh, learned counsel, is appearing for the petitioner.

Mr. Nilay Chakraborty, learned counsel, is appearing for the State.

The petitioner has filed the present application under section 401 read with section 482 of the Code of Criminal Procedure being G.R. Case no. 68/2019 arising out of Matigara police station FIR no. 12 of 2019 under section 406/420/34 IPC. On the basis of the written complaint of the opposite party no. 3, Matigara police station had

registered an FIR. As per the FIR there was a business transaction between the petitioner and the opposite party no. 3. The petitioner had issued a cheque no. 002017 dated 30th October, 2018 for Rs. 60 lakhs of Union Bank of India in the name of the opposite party no. 3 and it was also assured that remaining amount of Rs. 30 lakhs will be returned by December, 2018. It is also alleged that on enquiry from the bank, the opposite party no. 3 came to know that no sufficient fund is available. Accordingly, opposite party no. 3 has made a written complaint to the police. In the complaint it is also mentioned that he wanted to recover his money through legal assistance.

After registration of FIR, police had started investigation of the matter and the petitioner was arrested. In the meantime the petitioner and the opposite party no. 3 have entered into a settlement and on the basis of the compromise agreement, the petitioner was released on interim bail. The petitioner failed to appear before the learned trial court and accordingly, warrant has been issued.

The petitioner has filed the present application for quashing of the proceeding on the ground that the dispute between the petitioner and the opposite party no. 3 is civil in nature and the cheque on the basis of which the opposite party no. 3 had instituted the case being cheque no. 002017 dated 30th October, 2018 for Rs. 60 lakhs, against the said

cheque the opposite party no. 3 had already initiated a complaint case before the court of learned Magistrate at Allahabad. The learned Magistrate of Allahabad had taken cognizance and issued notice to the petitioner for appearance before the learned court at Allahabad for the offence punishable under section 138 of the N.I. Act.

This court has called for the case diary and also directed the investigating officer to appear before this court in person and the investigating officer is present along with the case diary.

The court has enquired from the investigating officer whether the police during investigation has seized the original cheque being no. 002017 dated 30th October, 2018 for Rs. 60 lakhs, the investigating officer stated before this court that the investigating officer has not seized the said cheque only opposite party no. 3 has handed over the Xerox copy of the said cheque.

Though the case was instituted in the year 2019 but till date the investigation has not been completed. The opposite party no. 3 has not informed the investigating officer that the opposite party no. 3 has utilized the impugned cheque in the other proceeding before Allahabad court and the Allahabad court had taken cognizance of the said case and issued notice to the petitioner for appearance of the petitioner for the offence under Section 138 of N.I. Act.

The State failed to show any documents from the record to continue with the investigation whether the other transactions have been made by the opposite party no. 3 with the petitioner as the investigating officer has not seized any documents either bank statement or any money receipts or any statement of the independent witnesses to show that other than Rs. 60 lakhs there is any other transactions made between the petitioner and the opposite party no. 3. In the case diary the investigating officer has recorded that sufficient material has been found but when this court has directed to produce materials to establish further incriminating materials against the petitioner so that the trial of the case can be proceeded but the State failed to show any document other than the cheque that is also Xerox copy which was seized. The Investigating Officer has seized bank statement with regard to some transaction which is also connected with the alleged cheque.

Considering the above facts and circumstances, this court finds that the opposite party no. 3 cleverly only to settle the monetary transactions between the parties had instituted the present criminal case and on the other hand the opposite party no. 3 had instituted another proceeding for the same amount of the same cheque for the offence under section 138 of the N.I. Act and the learned Magistrate of Allahabad court had also taken cognizance of the matter

and the case is pending before the learned Allahabad court for adjudication.

In view of the above, this court finds that this is a fit case wherein the proceeding instituted by Matigara police station being FIR 12/2019 dated 7th January, 2019 under section 406/420/34 of the IPC is required to be set aside and accordingly, the same is set aside.

Consequently, all proceedings pending before the learned Additional Chief Judicial Magistrate at Siliguri being G.R. Case no. 68/2019 is also set aside and quashed.

The warrant issued against the petitioner by the learned Magistrate is recalled.

Accordingly, CRR 7 of 2021 is disposed of.

Consequently, the connected application being CRAN 1/2021 is, thus, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(KRISHNA RAO, J.)