

28.03.2025
Item No. 12
Ashim(P.A.)
Ct. No. 40

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

CRR 4253 of 2024

Bishnupriya Ghosh
Vs.
Somnath Sarkar

Mr. Abhra Mukherjee,
Mr. Sauradeep Dutta,
Mr. Arpayan Mukherjee,
Mr. Himadree Ghosh.

...for the Petitioner.

Mr. Goutam Banerjee ...for the Opposite Party.

The instant application is filed under Section 442 read with 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 401 read with 482 of the Code of Criminal Procedure, 1973 is filed against the order dated 15/07/2024 passed by the Learned Judicial Magistrate, 2nd Court, Chandernagore in CR No. 595 of 2019 under Section 138 of the Negotiable Instrument Act, 188.

The Petitioner herein is facing the proceeding drawn up against her under Section 138 of the Negotiable Instrument Act, 1881. The defence of the Petitioner is that she did not issue the cheque. The Petitioner wanted to adduce evidence by referring the cheque to the handwriting expert. In terms of an earlier order, the Trial Court dismissed the application. A Co-

ordinate Bench set aside the order and directed that the Learned Magistrate would consider the application after examination of the accused under Section 313 of Cr.P.C.

When the present Petitioner was examined under Section 313 of the Cr.P.C., she stated that she did not want to adduce any evidence. The Trial Court seems to be much impressed by that answer, and disallowed the Petitioner to adduce evidence by referring the cheque to the handwriting expert. The Trial Court clearly was oblivious of certain things. Firstly, a Co-ordinate Bench in terms of earlier Order dated 08/12/2023 put a mandate on the Trial Court to consider the application after examination of witness under Section 313 of the Cr.P.C. The Trial Court is also oblivious of the facts that the Petitioner is willing to adduce evidence and get the cheque examined by the expert, as is manifested in the previous application filed for this purpose. A heavy burden of proof lies on the present Petitioner to dispel presumption in favour of the holder of the cheque. The Trial Court shall afford an opportunity to the present petitioner to adduce evidence. However, it is made clear that the Trial Court shall not allow any delay at the instance of the present petitioner in the pretext of adducing evidence.

The instant criminal revision application stands disposed of accordingly.

Copy of the order may be send to the Learned Trial Court.

(Sugato Majumdar, J.)