

CRIMINAL REVISION

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 645 of 2010

Judgment On: 31-03-2010.

Bijoy Traders

versus

State of West Bengal & Ors.

POINTS:

QUASHING- The dispute is civil in nature- whether the criminal proceeding should be quashed- the Negotiable Instruments Act, Ss.138/141-Code of Criminal Procedure, 1973 S 482.

FACTS:

The petitioner moved the criminal revision for quashing of a criminal case relating to an offence punishable under Sections 138/141 of the Negotiable Instruments Act. The petitioner is seeking quashing of the impugned criminal proceeding as there is no legally enforceable debt or liability, the dispute is purely civil in nature, the demand notice is not genuine and since the dispute is absolutely civil in nature, the continuation of the impugned criminal proceeding is wholly illegal and without jurisdiction.

HELD:

Whether there is any legally enforceable debt or not is a pure question of facts and essentially the defence of the accused. It is claimed, the dispute is civil in nature, even assuming such contention to be correct that would not operate as a bar in continuation of a criminal proceeding, when on the averment made in the petition of complaint, the offence has been clearly made out. The Court found that the prima facie case has been disclosed.

Para-4

For Petitioner: Mr. Uttam Majumdar
Mr. Purnendu Das

THE COURT:

1. Invoking Section 482 of the Code of Criminal Procedure, the petitioner has moved this criminal revision for quashing of a criminal case relating to an offence punishable under Sections 138/141 of the Negotiable Instruments Act.

2. Heard the learned advocate appearing on behalf of the petitioner. Perused the materials on record.

3. The grounds on which the petitioner is seeking quashing of the impugned criminal proceeding are as follows;

(a) There is no legally enforceable debt or liability.

(b) The dispute is purely civil in nature.

(c) The demand notice is not genuine; and

(d) Since the dispute is absolutely civil in nature, the continuation of the impugned criminal proceeding is wholly illegal and without jurisdiction.

4. I have given my anxious and thoughtful consideration to the points raised in support of this application for quashing. In my opinion, none of these grounds can be taken into consideration to decide the question of quashing of a criminal proceeding. Whether there is any legally enforceable debt or not that is a pure question of facts and essentially the defence of the accused which cannot be gone into at this stage. It is claimed, the dispute is civil in nature, even assuming such contention to be correct that would not operate as a bar in continuation of a criminal proceeding, when on the averment made in the petition of complaint, the offence has been clearly made out. I have carefully gone through the petition of complaint and found that the prima facie case has been disclosed.

5. This criminal revision has no merit and, accordingly, stands dismissed. Interim order, if any, stands vacated.

6. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(**Ashim Kumar Roy, J.**)