

**Criminal Revision**  
Present: **The Hon'ble Justice Ashim Kumar Roy**  
Judgment on: 10.03.2010  
**C.R.R. No. 641 of 2010**

**Sailen Saha**  
**versus**  
**Partha Dev Dutta & Anr.**

**Point:**

**DISCHARGE:** There was some overwriting- Whether an accused can be discharged - Negotiable Instruments Act, 1881 S. 138.

**Fact:** The petitioner, by filing the instant application, has challenged the order of the Learned Judicial Magistrate whereby his application for discharge in connection with a trial under Section 138 of the Negotiable Instruments Act involving dishonour of a cheque was rejected.

**Held:**

Learned Magistrate rejected the petitioner's prayer for discharge on the ground that such prayer is too pre-mature. According to the Learned Magistrate, although it appears there was some overwriting but he was of the opinion that such discrepancies can only be adjudicated after recording of evidence is over, more particularly at the time of cross-examination of the complainant. The order passed by the Learned Magistrate does not suffer from any illegality or impropriety and the same does not deserve any interference. (Paragraph – 3 & 4)

For Petitioner : Mr. Nilendra Narayan Ray

The Court: The present petitioner has been facing his trial before the Learned Judicial Magistrate, 4<sup>th</sup> Court, Asansol, Burdwan, of a charge under Section 138 of the Negotiable Instruments Act involving dishonour of a cheque of Rs. 1,62,500/-. In the said trial already the complainant has been examined in part and although his examination-in-chief has been completed but till date the witness has not been cross-examined. At the stage, the petitioner moved an application for discharge only on the ground that the case against the petitioner has been filed by practicing fraud by tampering the date on the Bank's Return Memo so as to gain time for filing the complaint even after the expiry of statutory period for filing complaint. However, the Learned Magistrate rejected such application. Hence, this criminal revision.

2. Heard the Learned Counsel appearing for the petitioner. Perused the impugned order as well as the other materials on record.

3. Now, having gone through the impugned order, I find that the Learned Magistrate rejected the petitioner's prayer for discharge on the ground that such prayer is too pre-mature. According to the Learned Magistrate, although it appears there was some overwriting but he was of the opinion that such discrepancies can only be adjudicated after recording of evidence is over, more particularly at the time of cross-examination of the complainant.

4. I am of the opinion, the order passed by the Learned Magistrate does not suffer from any illegality or impropriety and the same does not deserve any interference. Accordingly, this application stands dismissed. Interim order, if any, stands vacated.

5. I make it clear that dismissal of this criminal revision will not preclude the petitioner to raise the same question at the appropriate stage of the trial.

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

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