

Vivek Bajoria and anr. Vs. the State and anr.

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Court : Kolkata

Decided On : Mar-10-2008

Reported in : 2008(3)CHN809,2008CriLJ2793

Judge : Ashim Kumar Roy, J.

Acts : Negotiable Instruments Act - Sections 138 and 143(3); ;Code of Criminal Procedure (CrPC) - Sections 205, 251 and 313

Appeal No. : C.R.R. No. 53 of 2008

Appellant : Vivek Bajoria and anr.

Respondent : The State and anr.

Advocate for Def. : Jharna Biswas, Adv. and ;Anjali Agarwal, Adv. for O.P. No. 2

Advocate for Pet/Ap. : Sutapa Sanyal and ;Debaish Kumar Sinha, Adv.

Judgement :

Ashim Kumar Roy, J.

1. In the instant criminal revisional application the petitioner challenged an order passed by the Learned Metropolitan Magistrate, 16th Court, Calcutta in connection with a proceeding under Section 138 of the Negotiable Instruments Act directing issuance of warrant of arrest against the present petitioners, enjoying exemption

under Section 205 of Code of Criminal Procedure on his failure to appear in Court on the date fixed for his examination under Section 251 of the Code of Criminal Procedure.

2. Heard, the Learned Counsels appearing on behalf of the parties. Perused the impugned order and other materials on record.

3. It appears from the record of the proceedings relating to the case C3940 of 2007 under Section 138 of the Negotiable Instruments Act, now pending before the Learned Metropolitan Magistrate, 16th Court, Calcutta, the Learned Court by its order dated May 30, 2007 and thereafter by another order dated July 31, 2007 allowed the petitioners application under Section 205 of the Code of Criminal Procedure and thereby exempted them from appearing during the day to day proceeding of the said case. The said application was allowed on condition that the accused persons be present on the dates for recording of plea, their examination under Section 313 of the Code and on the date of delivery of judgement and on further condition that they be present in Court as and when called for. It further appears the Trial Court fixed September 28, 2007 for plea and directed the present petitioners to be present personally on the date so fixed. Thereafter, the date fixed for plea was deferred to December 13, 2007 as on that day the petitioners were not present in Court on the prayer of the complainant the Learned Magistrate issued warrant of arrest against them although they were duly represented by their learned advocate under Section 205 of the Code of Criminal Procedure.

It is a settled legal position in appropriate cases the Magistrate can allow an accused to make even his first appearance through a Counsel and the plea of the accused can also be recorded even when his Counsels make such plea on behalf of the accused in a case where the personal appearance of the accused has been dispensed with. Similarly, I am of the further opinion although a person enjoying exemption under Section 205 of the Code of Criminal Procedure may always be directed to be present in Court on any particular day by the Learned Magistrate, may be that for his examination under Section 251 of the Code of Criminal Procedure but such discretion must always be exercised by the Court judiciously

and thus when such an order is passed in respect of an accused enjoying exemption under Section 205 of the Code of Criminal Procedure the Court must indicate good reasons as to why such exemption has been withheld and he has been directed to be personally present in Court. No order in this regard can be passed mechanically and arbitrarily without being supported by sound judicial reasons. It appears in the instant case the Learned Magistrate directed for appearance of the accused for his examination under Section 251 of the Code of Criminal Procedure merely because his prayer for exemption under Section 205 of the Code of Criminal Procedure was allowed on condition that he shall be present in Court for his examination under Section 251 of the Code of Criminal Procedure which according to me is not in accordance with law and is wholly unjustified. In this connection reliance may be placed in the decision of the Apex Court in the case of Bhaskar Industries Ltd. v. Bhiwani Denim and Apparels Ltd. and Ors. reported in : 2001 CriLJ4250 , as well as the decision of this Hon'ble High Court in the case of S.R. Jhunjhunwalla v. B.N. Poddar and Anr. reported in 1987 C Cr LR (Cal) 66.

4. For the reason stated above, I am of the opinion the impugned order cannot be sustained and accordingly same is set aside.

5. The Learned Magistrate is directed to examine the accused/petitioners under Section 251 of the Code of Criminal Procedure through their Learned Counsels representing them under Section 205 of the Code of Criminal Procedure. I further direct that Learned Magistrate shall fix a date for such examination within a week from communication of this order. This is a case where the complaint was filed on February 22, 2007, about a year back. I, therefore, direct the Learned Magistrate to conclude the trial of this case immediately within a period of 3 months from the date of taking plea. It would not be out of place to mention that according to the mandate of Section 143(3) of the Negotiable Instruments Act every trial relating to an offence punishable under Negotiable Instruments Act be concluded as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.

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