

Magma Leasing Ltd. Vs. State

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Court : Kolkata

Decided On : Jul-28-2006

Reported in : 2007(1)CHN602

Judge : Sankar Prasad Mitra, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138, 141 and 145; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200, 401 and 482

Appeal No. : C.R.R. No. 1295 of 2006

Appellant : Magma Leasing Ltd.

Respondent : State

Advocate for Pet/Ap. : Amit Bhattacharyya, Adv.

Disposition : Application allowed

Judgement :

Sankar Prasad Mitra, J.

1. Mr. Amit Bhattacharyya, learned Advocate appears on behalf of the petitioner and he files affidavit of service upon the opposite party/State. However, none appears on behalf of the O.P/State.

2. In this application under Section 401 read with Section 482 of Cr. PC the petitioner has challenged the order dated 23.2.2006 passed by learned Metropolitan Magistrate, 9th Court, Calcutta in case No. C/6269 of 2004 pursuant to a proceeding under Section 138/141 of the Negotiable Instruments Act observing that Section 145 of N.I Act to be read together with Section 200 of Cr. PC and, therefore, in spite of filing of affidavit by the complainant he directed that presence of the complainant was necessary for holding an enquiry and, therefore, he was pleased to fix 24th April, 2006 for enquiry. Against this order the present application has been preferred by the petitioner.

3. It is submitted by the learned Advocate for the petitioner that Section 145 of N.I Act overrides Section 200, Cr. PC and therefore, the Magistrate was bound to issue process against the accused persons without fixing a date for further enquiry under Section 200 of Cr. PC. It is submitted by him that acceptance of the affidavit filed by the complainant under Section 145 of N.I Act would tantamount to enquiry under Section 200 of Cr. PC. In connection with that Mr. Bhattacharyya cited a decision reported in 2004(2) Bankmann 326 (Percy Fernandes v. Anita Patrao). In addition to this, Mr. Bhattacharyya also cited a decision of our High Court reported in 2006(2) E Cr N 68 (Arun Kumar Mohata v. Manjushree Singhi).

4. On a perusal of Section 145 of the Negotiable Instruments Act, provision contained in Section 200, Cr. PC decisions cited by Mr. Bhattacharyya and the impugned order passed by the learned Metropolitan Magistrate, 9th Court, Calcutta it appears to me that acceptance of affidavit filed by the complainant pursuant to Section 145 of Negotiable Instruments Act should be read as sufficient compliance as provided in Section 200, Cr. PC. That apart the Section 145 of the Negotiable Instruments Act runs as under:

145. Evidence on affidavit.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to

the facts contained therein.

5. Therefore, Section 200 of Cr. PC has no application in the instant case when the complainant filed an affidavit pursuant to Section 145 of N.I. Act. Therefore, the order passed by the learned Magistrate fixing a date for further enquiry appears to be improper and illegal and it calls for interference by this Court. The application stands on merit and it is accordingly allowed. The order dated 23.2.2006 passed by the learned Metropolitan Magistrate, 9th Court, Calcutta is hereby set aside. The learned Magistrate is directed to issue process against the accused persons on the basis of affidavit filed by the complainant before this Court without any delay.

6. The learned Magistrate is directed to proceed with the case expeditiously in accordance with law.

7. Let a copy of this order be sent to the learned Magistrate for his information and taking necessary action.

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