

Criminal Revision**PRESENT: The Hon'ble Justice Ashim Kumar Roy****Judgment On: 06-01-2010.****C.R.R. No. 419 of 2008****With****CRAN No. 858 of 2009****Dr. Kanti Bhusan Baksi****versus****The State of West Bengal & Anr.****Point:**

PERSONAL APPEARANCE: Accused is not able to venue of the trail due to physical incapacity - Whether personal appearance can be dispensed with-The Negotiable Instrument Act, 1981- Ss. 138,141- The Code of Criminal Procedure, 1973-S. 313.

Fact: Petitioners facing trial relating to offence punishable under Section 138/141 of the Negotiable Instrument Act and enjoying exemption under Section 205 of the Code of Criminal Procedure during trial. Applications were moved by the petitioners for supplying the questionnaire at the time when the trial reached the stage of their examination under Section 313 of the Code of Criminal Procedure. Ld. Trial Court rejected the prayers of the petitioners. Hence the Criminal Revision.

Held:

A pragmatic and humanistic approach is warranted if the accused is not able to reach the venue of the trial due to their physical incapacity arising out of his severe illness and old age and for other hardships.

Paragraph – 4

The Learned Court shall supply the questionnaire to their respective lawyers containing the questions which the Court might put to them under Section 313 of the Code and shall allow the accused persons, the petitioners herein, to return the questionnaire duly answered together with a properly authenticated affidavit that those answers were given by themselves. The accuseds shall

put their signature on all the sheets of the answered questionnaire. If the accused does not desire to give any answer to any question he shall be free to indicate that fact at the appropriate place in the questionnaire. The Court before supplying the questionnaire shall keep a copy of the same with its records. If the accused fail to return the questionnaires duly answered as aforesaid within one week from the date of receipt of such questionnaires they shall forfeit their right to seek personal exemption from Court during such questioning. Para 5 and 6

Case considered: 2008(2)C.Cr.LR(SC)646 (Keya Mukherjee Vs. Magma Leasing Ltd. & Ors.)
(Paragraph – 4)

For Petitioners : Mr. T. Ghosh
 Mr. Ranajit Roy

For State : Mr. K. A. Ahmed

For O.P. No. 2 : Mr. Ashoke Kr. Bhattacharya
 Mr. Abhijit Bhadra

The Court: Since in both the criminal revisions, viz., C.R.R. No. 419 of 2008 and C.R.R. No. 1285 of 2008, the subject matter of challenge is same and a common question of law involved for decision, those are taken up for hearing together.

2. The petitioner in C.R.R. No. 419 of 2008 and the petitioner in C.R.R. No. 1285 of 2008 were facing their trial before the Learned Metropolitan Magistrate, 14th Court, Calcutta in connection with Case No. 4098 of 2003 relating to the offence punishable under Sections 138/141 of the Negotiable Instruments Act. Both the petitioners during the trial were enjoying exemption under Section 205 of the Code of Criminal Procedure. However, when the trial reached the stage

of their examination under Section 313 of the Code of Criminal Procedure, applications were moved on their behalf for supplying the questionnaire to their respective advocates containing the question which the Court proposes to put to them in their examination under Section 313 of the Code. However, the Learned Trial Court rejected such prayers. Hence this criminal revision.

3. It appears that it was the case of the petitioners that they were not only enjoying exemption under Section 205 of the Code relating to a summons case, while the petitioner in C.R.R. No. 419 of 2008 is a renowned cardiologist aged about 74 years and suffering from various ailments and medically advised for complete bed rest, the petitioner in C.R.R. No. 1285 of 2008 is also an elderly person aged about 83 years and also suffering from various old aged ailments and advised bed rest, who had also lost his wife recently.

4. Now, nearly after 4 years of moving such applications at present the petitioners are aged about 77 and 87 years respectively. Thus, having regards to the case of the petitioners, I am satisfied that this is a case where the accuseds are not able to reach to venue of the trial due to their physical incapacity arising out of their severe illness and old age and for other hardships. Thus, in this case a pragmatic and humanistic approach is warranted, accordingly, in the light of the law as laid down by the Hon'ble Supreme Court of India, in the case of Keya Mukherjee Vs. Magma Leasing Ltd. & Ors., reported in (2008) 2 C Cr LR (SC) 646, I direct that if an application is filed accompanied by any affidavit sworn by themselves containing the following averments;

(a) A narration of facts to satisfy the Court of their real difficulties to be physically present in Court for giving such answers.

(b) An assurance that no prejudice would be caused to them, in any manner, by dispensing with their personal presence during such questioning.

(c) An undertaking that they would not raise any grievance on that score at any stage of the case.

5. The Learned Court shall supply the questionnaire to their respective lawyers containing the questions which the Court might put to them under Section 313 of the Code and shall allow the accused persons, the petitioners herein, to return the questionnaire duly answered together with a properly authenticated affidavit that those answers were given by themselves. The accuseds shall put their signature on all the sheets of the answered questionnaire. If the accuseds does not desire to give any answer to any question he shall be free to indicate that fact at the appropriate place in the questionnaire. The Court before supplying the questionnaire shall keep a copy of the same with its records.

6. I make it clear if the accuseds fail to return the questionnaires duly answered as aforesaid within one week from the date of receipt of such questionnaires they shall forfeit their right to seek personal exemption from Court during such questioning.

7. Needless to mention for ends of justice the Trial Court shall have the liberty to extend time for submitting the answer sheets in exceptional exigency. The aforesaid criminal revisions thus stands disposed of.

8. Last but not the least, I find the trial is pending since 2003 when the complaint was filed in Court, although according to the mandate of Section 143 of the N. I. Act, all endeavours must be made by the Trial Court to conclude the trial within six months from the date of filing of the complaint in Court. The Learned Magistrate is further directed to supply the questionnaires to the lawyers of the petitioners within a week from the date of communication of this order, the lawyers must be present in Court on the date so fixed and after receiving back the questionnaires shall conclude the trial within two weeks thereafter.

9. In view of disposal of both the main criminal revisional applications, with the application being CRAN No. 858 of 2009 and the application being CRAN No. 859 of 2009 become infructuous and accordingly stands disposed of.

10. 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.)