

Criminal Revisional
PRESENT: The Hon'ble Justice Ashim Kumar Roy
Judgment On : 08-02-2010.
C.R.R. No. 4254 of 2009
Shanti Swarup Agarwal
versus
The State of West Bengal & Anr.

Point:

Summons Case: Personal appearance being dispensed with whether his Counsel may be permitted to take on his behalf- Code of Criminal Procedure, 1973-S.205

Fact: The present petitioner has been facing his trial before the Learned Judicial Magistrate of a charge under Section 34 (5) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. The Learned Court below allowed the petitioner's application under Section 205 of the Code of Criminal Procedure. By a subsequent order the petitioner was directed to be personally present in court for recording his plea is the subject matter of challenge in this criminal revision.

Held: The offence punishable under Section 34 (5) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 is punishable only with the sentence of fine and therefore is a summons case and the trial relating to such offence to be held following the procedure prescribed for trial of summons cases. (Paragraph – 3)

It is a settled legal position that in a case where the offence relates to a summons case, and the personal appearance of the accused has been dispensed with under Section 205 of the Code, the Counsel of the accused may be permitted to take plea on his behalf. It is no doubt true even when an accused is enjoying such exemption the Court may always direct him to be present in Court on any particular day for his examination under Section 251 of the Code, however, such discretion must always be exercised by the Court judiciously and not mechanically. (Paragraph – 4)

For Petitioner : Mr. Sandipan Ganguly

For State : Mr. Sobhendu Sekhar Roy

For O.P. No. 4 : Ms. Sutapa Sanyal

The Court:

1. The present petitioner has been facing his trial before the Learned Judicial Magistrate, 4th Court, Howrah of a charge under Section 34 (5) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. In response to

summons on April 24, 2009 the petitioner appeared in Court and was released on bail. Thereafter, on July 24, 2009, the Learned Court below allowed the petitioner's application under Section 205 of the Code of Criminal Procedure. In the meanwhile, 2nd December, 2009 was fixed for recording of plea and the petitioner was directed to be personally present in Court. The said order whereby the petitioner was directed to be personally present in court for recording his plea is the subject matter of challenge in this criminal revision.

2. Heard Mr. Sandipan Ganguly, learned Advocate appearing for the petitioner as well as Mr. Sobhendu Sekhar Roy, learned Advocate for the State and Ms. Sutapa Sanyal, learned Advocate for the complainant.

3. The offence punishable under Section 34 (5) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 is punishable only with the sentence of fine and therefore is a summons case and the trial relating to such offence to be held following the procedure prescribed for trial of summons cases.

4. It is a settled legal position that in a case where the offence relates to a summons case, and the personal appearance of the accused has been dispensed with under Section 205 of the Code, the Counsel of the accused may be permitted to take plea on his behalf. Admittedly, in this case, the accused has been enjoying exemption under Section 205 of the Code of Criminal Procedure. It is no doubt true even when an accused is enjoying such exemption the Court may always direct him to be present in Court on any particular day for his examination under Section 251 of the Code, however, such discretion must always be exercised by the Court judiciously and not mechanically. Thus, when such an order is passed in respect of an accused whose personal appearance has been exempted under Section 205 of the Code, the Court must indicate very 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 without assigning reasons.

However, having gone through the impugned order, I find the Learned Magistrate quite mechanically and without assigning any reason passed the order impugned. Accordingly, the order impugned is set aside.

The Learned Magistrate is directed to examine the accused/petitioner under Section 251 of the Code through his Learned Advocate who is representing him under Section 205 of the Code on the next date fixed for recording of the plea.

The Learned Court below is requested to proceed with the matter on continuous basis and to conclude the trial as expeditiously as possible. 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.)