

CRIMINAL REVISION

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 4653 of 2009

With

CRAN No. 217 of 2010

Judgment On: 31-03-2010.

K. Balasubramanian

versus

The State of West Bengal & Anr.

POINTS:

PERSONAL APPEARANCE-Personal appearance exempted-Magistrate later on whether can direct to appear personally without indicating proper reason-Negotiable Instruments Act, S.138- Code of Criminal Procedure, 1973 Ss.205, 251, 313

FACTS:

The petitioner has been facing a prosecution under Section 138 of the Negotiable Instruments Act. In connection with the said proceeding the petitioner's personal appearance during the day to day proceedings of the case has been exempted in terms of the provisions of Section 205 of the Code of Criminal Procedure by the Court below on condition that he shall appear in Court for recording of his plea under Section 251 and for his examination under Section 313 of the Code of Criminal Procedure.

HELD:

The Learned Court below allowed the petitioner's prayer under Section 205 of the Code on condition that he must be present for his examination under Sections 251 and 313 of the Code of Criminal Procedure. However, no reason has been indicated in the order as to why the petitioner has been directed to be present personally for his examination when his personal appearance has been exempted under Section 205 of the Code. When an order is passed in respect of an accused enjoying exemption, the Court must always indicate very good reasons as to why such exemption has been withheld and the accused 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 reason. Para-3

For Petitioner: Mr. Sourav Chatterjee

For O.P. No.2: Mr. Sandipan Ganguly

Mr. Debapriya Gupta

THE COURT:

1. The present petitioner has been facing a prosecution under Section 138 of the Negotiable Instruments Act, before the Learned Metropolitan Magistrate, 8th Court, Calcutta. In connection with the said proceeding the petitioner's personal appearance during the day to day proceedings of the case has been exempted in terms of the provisions of Section 205 of the Code of Criminal Procedure by the Court below on condition that he shall appear in Court for recording of his plea under Section 251 and for his examination under Section 313 of the Code of Criminal Procedure.

2. Heard the learned advocate appearing on behalf of the petitioner as well as the learned advocate of the opposite party. Perused the impugned order.

3. Admittedly, the case against the petitioner relates to an offence punishable under Section 138 of the Negotiable Instruments Act and is a summons case. It is a settled legal position, in a summons case the Magistrate can permit an accused to make his first appearance as well as to take plea under Section 251 of the Code through his Counsel where the personal appearance of the accused has been dispensed with. Furthermore, in terms of the proviso to Section 313 (1) of the Code of Criminal Procedure, in a summons case where the personal appearance of an accused has been dispensed with, the Court may also dispense with his examination there under and examine his lawyer. It is true in the instant case the Learned Court allowed the petitioner's prayer under Section 205 of the Code on condition that he must be present for his examination under Sections 251 and 313 of the Code of Criminal Procedure. However, no reason has been indicated in the order as to why the petitioner has been directed to be present personally for his examination under Sections 251 and 313 of the Code when his personal appearance has been exempted under Section 205 of the Code. Although, a person enjoying exemption under Section 205 of the Code may always be directed to be personally present in Court on any particular day, may be for his examination under Section 251 of the Code or for his examination under Section 313 of the Code, but such discretion must always be exercised judiciously. Thus when such an order is passed in respect of an accused enjoying exemption under Section 205 of the Code, the Court must always indicate very good reasons as to why such exemption has been withheld and the accused 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 reason. From perusal of the impugned order, I do not find any reason has been assigned by the Learned Court below, while the petitioner was directed to be present in Court for his examination under Section 251 of the Code or under Section 313 of the Code. In such view of the matter, the order impugned so far that relates to a direction upon the petitioner to be present in Court personally for his examination under Section 251 and under Section 313 of the Code is set aside. The Learned Magistrate is directed to examine the accused/petitioner under Section 251 of the Code through his Counsel representing him under Section 205 of the Code.

4. It may be put on record that the learned advocate appearing on behalf of the opposite party has not disputed the settled position of law and conceded the petitioner's prayer, however he pointed out that this case was instituted on a complaint filed in June 2009 and already six months have been elapsed from the date of filing of the complaint but the trial

has not yet been concluded. In such circumstances, the Learned Magistrate is further directed to conclude the trial within three months from the date of communication of this order and to proceed with the case strictly in terms of Section 143 of the Negotiable Instruments Act.

5. This application succeeds and stands allowed.

6. In view of disposal of the main criminal revisional application, the application for extension of interim order being CRAN No. 217 of 2010 become infructuous and accordingly stands disposed of.

7. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.
(*Ashim Kumar Roy, J.*)