

Criminal Revision
Present: The Hon'ble Justice Ashim Kumar Roy
Judgment On : 05-05-2010.
C.R.R. No. 41 of 2010
With
CRAN No. 623 of 2010
Messers. Panskura Cold Storage, now, Messers. Panskura Cold Storage
Private Limited &
Ors.
versus
Sri Sujit Kumar Maity & Anr.

Points:

Summary trial: In a summary trial whether a succeeding Magistrate deliver judgment on the evidence partly recorded by his predecessors-Code of Criminal Procedure, 1973 S 326

Facts:

During the course of trial the complainant tendered his evidence on affidavit, thereafter he was cross-examined and then discharged. Soon thereafter the Learned Magistrate was transferred and his office was succeeded by another Learned Magistrate. Thereafter, the succeeding Magistrate on the prayer of the complainant directed for de-novo trial.

Held:

Having regards to the provisions of Section 326 of the Code of Criminal Procedure in a summary trial it is not legally permissible for a succeeding Magistrate to act and deliver a judgement, on the evidence partly recorded by his predecessors and partly recorded by him. This criminal revision has no merit and accordingly stands dismissed. Para-3

For Petitioners : Mr. Shaikh Kamal Uddin

For State : Mr. Swapan Kumar Mullick

For O.P. No. 1 : Mr. Navanil De

The Court:

In this criminal revision the petitioner, who has been facing his trial in connection with an offence punishable under Section 138 of the Negotiable Instruments Act have challenged an order whereby the Trial Court directed de novo trial.

2. Heard the Learned Counsels appearing on behalf of the petitioner, the opposite party no. 1, the complainant and the Learned Advocate appearing on behalf of the State.

3. It appears that during the course of trial the complainant tendered his evidence on affidavit, thereafter he was cross-examined and then discharged.

Soon thereafter the Learned Magistrate was transferred and his office was succeeded by another Learned Magistrate. Thereafter, the succeeding Magistrate

on the prayer of the complainant directed for de-novo trial. As the law stands all

offences punishable under Section 138 of the Negotiable Instruments Act are triable by a Court of Judicial Magistrate, First Class or by a Metropolitan Magistrate, in a summary way. It is not disputed in the case at hand the trial was also held in a summary way. Now, having regards to the provisions of Section 326 of the Code of Criminal Procedure in a summary trial it is not legally

permissible for a succeeding Magistrate to act and deliver a judgement, on the

evidence partly recorded by his predecessors and partly recorded by him.

In view of the aforesaid position of law, I do not find any illegality or infirmity in the impugned order.

This criminal revision has no merit and accordingly stands dismissed.

4) It appears that the aforesaid case was instituted on a complaint made to Court on March 5, 2007 and already more than three years have been

elapsed from the date of filing of the complaint, but trial has not been concluded,

which is contrary to the mandate of Section 143 of the Negotiable Instruments

Act. Accordingly, the Trial Court is directed to conclude the trial as expeditiously as possible and within three months from the date of communication of this order and strictly in terms of provisions of Section 143 of the Negotiable Instruments Act.

5) In view of the dismissal of main criminal revisional application, an application for extension of interim orders being CRAN No. 623 of 2010 accordingly stands disposed of.

6) 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.)