

(2005) 04 CAL CK 0045
In the Calcutta High Court
Case No : C.R.R. No. 829 of 2005

Anil Credit Commercial Pvt. Ltd.

APPELLANT

Vs

E.C. Bose and Co. (Paradip) Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 01-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205, 305
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2006) 2 BC 472 : (2005) 3 CHN 91 : (2007) 2 RCR(Criminal) 825

Hon'ble Judges : P.N. Sinha, J

Bench : Single Bench

Judgement

P.N. Sinha, J.—Heard the learned Advocate for the petitioners. In my opinion, this revisional application can be disposed of without hearing the opposite parties and without serving any notice to the opposite parties. It appears that by the order dated 22nd February, 2005 passed by the learned Metropolitan Magistrate, 6th Court, Kolkata in connection with Case No. 1333 of 2000 u/s 138 of the Negotiable Instruments Act he issued the order of attachment against the accused No. 1 company and warrant of arrest against accused No. 2 as on the said date the learned Advocate who was representing both company and the accused No. 2 was absent and the learned Magistrate passed the impugned order. It appears to me that the said order was not in accordance with the law because when the learned Magistrate found that the learned Advocate was absent, who was representing both the company and the accused No. 2, the learned Magistrate should have asked the said learned Advocate to show cause as to why the necessary order in accordance with the law would not be passed for the absence on that date. It should be remembered that the lawyers generally remain busy and the travel from one Court to another Court for their clients in conducting the different types of cases. It is almost settled that in case of such nature particularly u/s 138/141 of the Negotiable Instruments Act, the accused persons can be permitted to be represented u/s 205 and the company u/s 305 of the Code of Criminal Procedure. It appears to me that the learned

Magistrate acted with rather haste instead of keeping proper mind to the relevant provisions of law. That being the position the impugned order passed by the learned Magistrate dated 22.2.2005 issuing order of attachment against the accused No. 1 company and warrant of arrest against the accused No. 2 is set aside and the respondent company and accused No. 2 both are permitted to be represented under Sections 305 and 205 of Cr. PC respectfully in terms of earlier orders and that order will remain in force.

2. This revisional application is, accordingly, disposed of.

3. The department is directed to transmit the order to the learned Metropolitan Magistrate, 6th Court, Calcutta immediately.

4. Xerox certified copy of this order, if applied for, be given to the petitioner as early as possible.