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**(2007) 07 CAL CK 0044**  
**In the Calcutta High Court**  
**Case No : C.R.R. No. 1183 of 2007**

Ashim Kumar Das

APPELLANT

Vs

Sanjib Roy

RESPONDENT

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**Date of Decision :** 24-07-2007

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 200, 204, 251, 252, 254  
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2007) 4 CHN 302

**Hon'ble Judges :** Arunabha Basu, J

**Bench :** Single Bench

**Advocate :** Dhrubajyoti Ghosh and Protiti Mukherjee, for the Appellant; B. Roy, for opposite party No. 1, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Arunabha Basu, J.—This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure.

2. Let affidavit-of-service filed in Court today be kept with the record.

3. In spite of service none appears for the opposite party No. 2.

4. The learned Advocate for the petitioner submits that so far as the C.R. Case No. 415 of 2003, the learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad, passed an order dated November 23, 2006 whereby the learned Magistrate held that the case was not maintainable and dismissed the case and also discharged the accused persons.

5. From the certified copy of the order produced before this Court it appears that the petition of complaint u/s 138 of the Negotiable Instruments Act was filed by the petitioner and vide order dated October 1, 2003, the learned Magistrate after taking cognizance examined the witnesses in terms of Section 200 of the Code of Criminal Procedure and issue process against the accused persons calling upon him to face trial for commission of offence punishable u/s 138 of the Negotiable

Instruments Act. The documents produced by the petitioner further shows that vide order dated May 6, 2004 the learned Magistrate examined the accused u/s 251 of the Code of Criminal Procedure and subsequently fixed several dates for evidence. It, further, appears that the case was pending at the stage of evidence for number of dates but no evidence was adduced by the complainant.

6. Ultimately, an application was filed by the opposite party to drop the case on the ground that the same is premature one. It appears from the certified copy of the order dated November 23, 2006, the learned Magistrate after hearing the submissions made by the respective parties decided that the complaint case was premature one and without considering any evidence and without giving any opportunity to the complainant to produce necessary evidence in support of his contention decided the matter that the petition of complaint was filed premature and as such passed an order dismissing the complaint and discharging the accused persons.

7. It is rightly pointed out by the learned Advocate for the petitioner that the order in question passed by the learned Magistrate cannot have any sanction of law. The learned Magistrate as already pointed out issued process against the accused persons in terms of Section 204 of the Code of Criminal Procedure and such process can be issued only when the learned Magistrate was satisfied prima facie that accused persons has committed offence for which he must be called upon to face trial. So far as the present case is concerned, the learned Magistrate also examined the accused u/s 251 of the Code of Criminal Procedure and thereafter fixed dates for producing evidence. When the stage is reached and as such the learned Magistrate has no inherent jurisdiction, he can only pass an order in terms of Section 255 of the Code of Criminal Procedure after taking evidence.

Section 255 reads as follows:

Acquittal or conviction.--(1) If the Magistrate, upon taking the evidence referred to in Section 254 and such further evidence, if any, as he may, of his motion, cause to be produced; finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, u/s 252 or Section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

8. The other sections, which permits premature closure of case, have no application so far as the present case is concerned.

9. In this view of the matter, I have no other option but to decide that the

learned Magistrate adopted the procedure not sanctioned by law. The learned Magistrate ought to have given opportunity to both the parties to adduce evidence in support of their contentions and then only should have decided the entire matter on consideration of evidence and after passing judgment in terms of Section 255 of the Code of Criminal Procedure. As the order in question passed by the learned Magistrate is illegal, the same is required to be set aside and quashed.

10. The criminal revision is allowed. The order dated November 23, 2006 is set aside. The learned Magistrate is directed to proceed with the trial from the stage of evidence and in view of the long pendency of the matter he is also directed to follow the provision of Section 309 of the Code of Criminal Procedure and to fix consecutive dates for evidence. In any case, it is expected that the learned Magistrate shall dispose of the case preferably within a period of six months from the date of receipt of the copy of the order.

11. Criminal Section is directed to send a copy of the order to the learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad, for necessary compliance. Urgent xerox certified copy of this order may be supplied as and when applied.