

(1989) 09 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No. 2501 of 1989 (R)

D. Bhattacharya

APPELLANT

Vs

The State of Bihar of Ors.

RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 305

Citation : (1990) 1 PLJR 654

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Judgement

S.N. Jha, J.—In this case notice was issued to Opposite party No. 2, but inspite of the service of notice he has not cared to appear before this Court.

2. Heard the learned Counsel for the Petitioner and opposite party No. 1.

3. After hearing the parties I am disposing of this application at the admission stage itself with the consent of the parties in the following terms:

4. It was submitted on behalf of the Petitioner that the trial court can very well prosecute Coropany namely, M/s Indian Aluminium Co. Ltd but the trial court has committed illegality while issuing process against Shri D. Bhattacharya, Mines Manager, Bagru Hill Bauxite Mines, Lohardaga.

5. It was pointed out by the learned Counsel that, if any violation has been made by the company, the company may be prosecuted. He has no grievance for that, but his grievance is that summons ought not to have been issued against the Manager because he has not been nominated on behalf of the company to face the prosecution on behalf of the company, as provided u/s 305 of the Criminal Procedure Code.

6. The learned Counsel for the Petitioner has drawn any attention to Sub-clause 2 and 3 of Section 305 of the Code of Criminal Procedure which read as follows:

(2) Where a corporation is the accused person or one of the accused persons in

an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

From a bare perusal of these two clauses of Section 305 of the Code of Criminal Procedure it is apparent that when a company or corporation is being prosecuted in a criminal case in that case processes may be issued against the company and company be given a chance to nominate a representative on its behalf to face the trial on behalf of the company.

7. From the order of the cognizance it appears that opportunity has not been given to the aforesaid company. In that view of the matter, it is directed that prosecution may be launched against the company but an opportunity should be given to the aforesaid company to nominate a representative on its behalf and take any proper step thereafter in accordance with law.

8. With these directions that part of the impugned order issuing processes against Sri D. Bhattacharya, the Manager of the said company, is quashed and the trial court is directed to give an opportunity to the company to nominate its representative and face the prosecution and thereafter trial court will issue process against that person.

9. It is, however, made clear that the cognizance against the company has not been quashed by this order. Only that part of the impugned order, as stated above, has been quashed. It will be open to the trial court to proceed with the trial after the company nominates its representative and takes step in accordance with law.

10. With these observations this application is being disposed of.