

(2000) 07 DEL CK 0107

In the Delhi High Court

Case No : Criminal M. (M) No. 2520 of 2000

Glaxie Plywood Industries (P) Ltd.

APPELLANT

Vs

Shri Vijay Kumar

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Citation : (2001) 1 RCR(Criminal) 799

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Mr. S.N. Gupta, AdvMr. M.S. Butalia Adv, for the Appellant;

Judgement

R.S. Sodhi, J.—Admit.

2. Heard learned counsel for the petitioner who submits that inadvertently due to noting a wrong date in his diary, he could not appear before the Court of Metropolitan Magistrate on 26th April, 2000 whereby the complaint has been dismissed for non-prosecution. The petitioner is aggrieved of this order dismissing the complaint and has challenged the same by way of the instant petition.

3. It is submitted by learned counsel for the petitioner that at this time notice need not be issued to the respondent because no right of being heard has accrued to him as the case was at a pre-evidence stage and that he is not an accused before the learned Metropolitan Magistrate and, therefore, the respondent need not be heard on the question whether the complaint can be restored or not. I have called upon Mr. Butalia, learned counsel for the State, to assist me whether it is necessary for me to issue notice to the accused while disposing of this petition, the answer I have received is that "it is not necessary for the reasons that the respondent has not become a party to the proceedings which have been dismissed for non-prosecution and, Therefore, he need not be heard on the question of restoration of the complaint.

4. It is settled law that until process has been issued, a person does not become

an accused nor he has any right to represent his case before that forum. That being the situation, when an order has been made dismissing the complaint for non-prosecution at a stage when summons have yet to be issued or even evidence yet to be taken into consideration, no right would accrue to any other person and, Therefore, it would be open to this Court to interfere in the impugned order without calling upon the comments of defense of the co-called accused. The Supreme Court in Dr. S.S. Khanna Vs. Chief Secretary, Patna and Another, has categorically held that the right of the accused comes into force only upon him being made an accused, namely, being summoned in a complaint case. In this view of the matter, I have heard learned counsel for the petitioner, who has shown sufficient cause for his non-appearance on 26th April, 2000 and am satisfied that the cause shown is bonafide. This Court, while dealing with similar situation in M/s. K. & Co. Vs. M/s Rajinder Steels Ltd. and ors, 2000 (1) JCC (Delhi) 107 has held that if sufficient cause is shown, a complaint dismissed in default can be revived and restored to its original number. I, Therefore, allow this petition and set aside the order dated 26th April, 2000 passed by the learned Metropolitan Magistrate dismissing the complaint of the petitioner, and restore the complaint of the petitioner to its original number. The learned Metropolitan Magistrate is directed to dispose of the complaint in accordance with law. The petitioner shall appear before the Metropolitan Magistrate on 31st August, 2000.

5. The petition is disposed of.