

(2017) 08 CAL CK 0008
In the Calcutta High Court
Case No : 3535 of 2016

Lun Karan Sureka

APPELLANT

Vs

The State of West Bengal & Anr

RESPONDENT

Date of Decision : 04-08-2017

Acts Referred:

[Central Excise Act, 1944](#), [Section 9\(A\)\(A\)](#)
- Offences and penalties
[Code of Criminal Procedure, 1973](#), [Section 205](#)
[Section 482](#), [Section 482](#)

Citation : (2017) 08 CAL CK 0008

Hon'ble Judges : Debi Prosad Dey

Bench : SINGLE BENCH

Advocate : Rajdeep Majumder, Moyukh Mukherjee

Final Decision : Disposed off

Judgement

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the petition of complaint being no. 22 of 2014 pending before the Court of learned Judicial Magistrate, 5th Court, Burdwan.

2. Prosecution in the form of complaint was started against M/s. Burdwan Iron and Steel Company Pvt. Ltd. and one Sri Lun Karan Surekha for commission of offence under Section read with Section 9(A) (A) of the Central Excise Act, 1944. On receipt of such petition of complaint cognizance was taken by learned Chief Judicial Magistrate, Burdwan and the case was transferred to the Court of learned Judicial Magistrate, 5th Court, Burdwan for inquiry and trial. Learned Judicial Magistrate accordingly issued summons against the present petitioner. The prayer of the present petitioner under Section 205 of the

Code of Criminal Procedure was rejected by learned Judicial Magistrate, 5th Court, Burdwan. Thereafter this application under Section 482 of the Code of Criminal Procedure has been filed challenging the entire petition of complaint on the ground that the petitioner is a resident of Calcutta yet learned Magistrate did not hold any inquiry as stipulated under Section 202 of the Code of Criminal Procedure at the time of issuing summons against the petitioner and accordingly in view of the decision reported in 2014(14) SCC 638 (Vijay Dhanuka and Ors. Vs. Najima Mamtaj and Ors.) the order of issuance of summons ought to be set aside.

3. It may be stated here that despite service of notices upon the opposite parties, no one appeared on behalf of the opposite party.

4. On a plain reading of the petition of complaint, it transpires that M/s. Burdwan Iron and Steel Company Pvt. Ltd. Is situated at G. T. Road, Saktigarh, District- Burdwan of which the petitioner is one of the directors. The registered office may be situated in Calcutta but that does not mean that the Magistrate is duty bound to hold inquiry before issuance of summons against the directors of the factory which is situated within the jurisdiction of learned Magistrate. Therefore, I find no reason to hold that the order of taking cognizance as well as issuance of summons is bad in law.

5. However, learned Advocate appearing on behalf of the petitioner submitted that the petition under Section 205 of the Code of Criminal Procedure has been rejected by learned Magistrate without assigning any valid reason and accordingly by invoking the jurisdiction under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, a direction may kindly be issued so that the application of the petitioner under Section 205 of the Code of Criminal Procedure may be allowed by the learned Magistrate. The certified copy of order dated 05.08.2015 has been annexed with the application wherefrom it transpires that learned magistrate has rejected the application under Section 205 of the Code of Criminal Procedure of the petitioner holding inter-alia that granting of such prayer of the petitioner tantamount to abuse of

process of Court. Learned Magistrate however has relied on a decision reported in 1992 Cr.L.J. 1397 wherefrom it appears that in technical cases where no moral turpitude is involved, where the accused are ladies old sickly persons, factory workers, labourers and others may be exempted from personal appearance. Admittedly, the petitioner is one of the directors of the factory and has been residing in Calcutta. Admittedly, the petitioner is required to travel extensively to different parts of India on short notice for the purpose of his business. The provision under Section 205 of the Code of Criminal Procedure has been enacted in order to provide exemption from appearance in Court of some accused during trial subject to the conditions imposed by learned Court. Mere acceptance of such prayer under Section 205 of the Code of Criminal Procedure does not amount to record of an order of acquittal against the accused. The allegations levelled against the petitioner are regarding non-payment of taxes under Central Excise Act and therefore such allegations have to be proved only on the basis of documentary evidences. Identification of the petitioner at the time of trial is not at all required by any stretch of imagination. In that view of this case I find sufficient merit in the submission of learned Advocate for the petitioner that the personal appearance of the present petitioner during the pendency of the case may be exempted under Section 205 of the Code of Criminal

Procedure subject to the conditions to be imposed by learned Magistrate. In that view of this case prayer for quashing the case stands rejected. However, the order dated 05.08.2015 passed by learned Magistrate in GR case no. 20 of 2014 is set aside. Learned Magistrate is directed to rehear the said application under Section 205 of the Code of Criminal Procedure filed by the present petitioner and to pass necessary order in terms of the observations made in the forgoing paragraphs.

6. The application is thus disposed of in terms of the aforesaid order.

7. Let a copy of this order be forwarded to learned Judicial Magistrate, 5th Court, Burdwan forthwith for his information.

8. Stay order if there be any stands vacated.
9. The criminal revisional application is thus disposed of.
10. No order as to costs.
11. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible