
(2008) 05 CAL CK 0004
In the Calcutta High Court
Case No : C.R.R. No. 1402 of 2008

Tata Tele Services Limited

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 203
Negotiable Instruments Act, 1881 (NI) — Section 145, 145(1)

Citation : (2008) 4 CHN 370 : (2009) 1 CivCC 161 : (2008) 4 RCR(Civil) 941 :
(2009) 5 RCR(Criminal) 250

Hon'ble Judges : Arunabha Basu, J

Bench : Single Bench

Advocate : Ayan Bhattacharjee and Indrajit Adhikari, for the Appellant;

Final Decision : Allowed

Judgement

Arunabha Basu, J.—Heard learned Advocate for the petitioner. In view of the grounds highlighted in the application, particularly in view of the fact that at the initial stage the learned Magistrate dismissed the petition of complaint u/s 203 Cr.PC, I am of the view that the matter can be decided without directing issuance of notice to the opposite party. The learned Advocate for the petitioner submitted that in view of Section 145 of the NI Act, 1881, it was open to the petitioner to give evidence on affidavit. Sub-section (1) of Section 145 of the NI Act makes it absolutely clear that such evidence on affidavit can be read at the time of any enquiry, trial or other proceeding.

2. The word enquiry will be applicable so far as the present case is concerned because the learned Magistrate after taking cognizance was conducting enquiry in terms of Section 200 Cr.PC and as such the provision as prescribed under Special Act should have been taken into consideration. It appears that the learned Magistrate insisted on the personal appearance of the complainant (petitioner herein) on consideration of the language used u/s 200 Cr.PC. Even in Section 200 Cr.PC, there is exemption Clause so far as the complaint is filed by

the public servant and as such, recording of evidence u/s 200 Cr.PC is not mandatory in connection with all cases. But so far as the present case is concerned, recording of evidence will be guided in terms of Section 145 of the NI Act.

3. Under these circumstances, the order passed by the learned Magistrate cannot be sustained.

4. The learned Advocate for the petitioner in support of his contention referred to the Single Bench decision of this High Court in Magma Leasing Limited v. State reported in 2006(2) C Cr. LR (Cal) 539, where the learned Judge of this Court held that acceptance of affidavit filed by the complainant pursuant to Section 145 of NI Act should be read as sufficient compliance as provided in Section 200 Cr.PC. In this view of the matter, it appears that this point is already settled by this Court in the case as referred to above.

5. In view of my above discussion, the revisional application is allowed and the order dated 10.03.08 passed by the learned Metropolitan Magistrate, 5th Court, Calcutta in connection with case No. C/6500 of 2007 is hereby set aside and quashed. The learned Magistrate is directed to proceed with the case in accordance with law in the light of the guideline and observation as reflected in the body of the order.

6. Criminal Section is directed to forward a copy of the order to the learned Court below.

7. Criminal Section is directed to supply urgent certified copy of the order to the learned Advocate for the petitioner as and when applied for.