

01 26.06.
Ct 2023
237
rup

CRA (SB) 82 of 2023
International Combustion (India) Limited
Versus
Mr. Sanjay Jain

Ms. Sreeparna Das,
Mr. A. P. Gomes ... for the appellant.

Affidavit of service filed by the appellant be taken on record.

Learned advocate appearing on behalf of the appellant is present. None appears on behalf of the respondent in spite of service of notice.

This appeal has been preferred assailing the order dated 10.11.2022 passed by the learned Judicial Magistrate, 6th Court, Howrah in connection with Complaint Case No. 141 of 2021 under Section 420/406/417/418 /120B of the Indian Penal Code.

Learned advocate appearing on behalf of the appellant submitted that due to misinformation regarding the date 10.11.2022, no steps was taken on behalf of the complainant and also could not file any show cause petition ordered by the learned Magistrate. For the reason, learned Magistrate dismissed the complaint case for non-prosecution.

On careful perusal of the copy of the orders annexed along with the memo of appeal, I find that

initially 04.03.2021 on receipt of the complaint learned Magistrate took cognizance of the offence and fixed the date of Solemn Affirmation on 17.05.2021. Due to local Bar Association the case was adjourned till 11.08.2021. Subsequently on 01.11.2021 the date was fixed for Solemn Affirmation. But on that date the Presiding Officer was on leave. But on the next date i.e. on 13.01.2022 complainant did not take any steps and he was directed to show cause that is why the case shall not be dismissed on 15.03.2022. On 15.03.2022 complainant could not file show cause and prayed for accommodation. Prayer was allowed subject to payment of cost of Rs.500/-. On the next date i.e.13.06.2022 the case was adjourned due to resolution of local Bar Association. On the next date i.e. on 10.11.2022 when Presiding Officer was on leave. On 10.11.2022 complainant did not take any steps till 3.30 P.M and as a result of which complaint case was dismissed for non-prosecution.

In view of the aforesaid facts and circumstances, I find that on different occasions the case was adjourned due to resolution of local Bar Association and also due to leave of Presiding Officer.

In the aforesaid view of the matter, in my opinion, another opportunity should have been given to the complainant to produce the witnesses for Solemn Affirmation.

For the reason, the order dated 10.11.2022 stands set aside.

Appellant/complainant is directed to appear before the learned Trial Court and to produce witnesses for Solemn Affirmation on the date fixed by the learned Trial Court without fail. In case of failure on the part of the complainant to produce witnesses for Solemn Affirmation, learned Magistrate will be at liberty to pass the consequential order without referring to the mater of this Court further.

The appeal is allowed.

Let the copy of this order be communicated to the learned Judicial Magistrate, 6th Court, Howrah immediately for information and compliance.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)