

CRR 2243 of 2009

In the matter of : M/S. Mansingka Exim Pvt. Ltd.

None is appearing on behalf of the petitioner. The office report indicates that despite efforts no notice could be served upon the petitioner as he was not found in the address given in the cause title of the petition. Under such circumstances, I am inclined to dispose of the matter on merit based on materials available with the record instead of adjourning the case suo motu.

This revisional application challenges the judgment and order passed by learned Additional District and Sessions Judge, 2nd Fast Track Court, Bichar Bhavan, Calcutta in Criminal Revision No. 158 of 2008 dated 27th February, 2009. By the impugned judgment learned Appellate Court was pleased to set aside the order passed by learned 8th Court of Metropolitan Magistrate, Calcutta accepting the evidence of the complainant on affidavit under Section 145 of the Negotiable Instruments Act.

M/S. Mansingka Exim Pvt. Ltd. Being represented by Kailash Kumar Raut took out an application under Sections 138/141 of the N.I. Act against M/S. Kusum Products Ltd., And the said case being Complaint Case No. C/3972/02, was transferred to the learned Metropolitan Magistrate, 8th Court, Calcutta for disposal. The accused persons

surrendered to the jurisdiction of learned Trial Court and learned Trial Court after complying with the provision of Section 251 of the Cr.P.C. fixed 6th May, 2008 as the date for evidence by the complainant. The complainant filed a written evidence on affidavit before the learned Trial Court in compliance with the provision of Section 145 of the N.I. Act and the said order was challenged in Criminal Revisional No. 158 of 2008. While passing the impugned judgment learned Additional Sessions Judge observed that the case was filed in the year 2002, prior to the amendment of Section 145 of the N.I. Act that was given effect from 6th February, 2003. According to the learned Appellate Court, since the petition of complaint is of 2002, provision of Section 145 of the N.I. Act cannot be made applicable.

Section 145 of the Evidence Act initiates as follows:-

“145. Evidence on affidavit.- (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.*

(2) *The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.*

Expression “subject to all just exceptions” used in section 145 of the Act means that evidence given on affidavit must be admissible and it must not include inadmissible materials such as facts not relevant to issue or any hearsay statements; Mandvi Co-operative Bank Ltd. V. Nimesh B. Thakore, AIR 2010 SC 1402: (2010) 3 SCC 83: JT 2010 (1) SC 259.”

This provision was introduced with effect from 6th February, 2003 and the impugned order accepting the evidence of affidavit was passed on 19th August 2008. This provision of law pertains to the procedural aspect of taking evidence on affidavit and it goes without saying that evidence given on affidavit must be admissible and must not include anything which is not admissible or irrelevant.

It is trite to say that, procedural law can always be given retrospective effect unlike penal law. Simply because the petition of complaint was filed in 2002 it cannot de-bar the Trial Court to invoke the provision of Section 145 of the N.I. Act on 19th August, 2008. The learned Trial Court failed to appreciate the object behind such legislation which aims at ensuring expeditious trial.

The impugned judgment, in my opinion, should not be allowed to remain in force and should be set aside which results to the order passed by the learned Trial Court on 19th August, 2008 standing restored.

With the aforesaid observation, the Criminal Revisional application being CRR 2243 of 2009 thus stands disposed of.

Order of stay, if any, stands vacated.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)