

CRR 3137 of 2008  
CRAN 1 of 2009

In the matter of : Sudip Kumar Banerjee & Anr.

Mr. Milon Mukherjee, Sr. Adv.  
Mr. Sandipan Ganguly, Sr. Adv.  
Mr. Biswajit Manna  
Mr. R. Ganguly  
Mr. Smartajit Sarkar           ... for the petitioners

Mr. Kishore Mukherjee       ... for O.P. No. 2

Mr. N.P. Agarwala  
Mr. P. Bose  
                                          ... for the State

This revisional application under Section 482 of the Cr.P.C. has been filed by the petitioners seeking an order of quashment of the proceeding being Case No. C-450 of 2008 under Sections 341/323/506(ii)/34 of the Indian Penal Code pending before the learned 3<sup>rd</sup> Judicial Magistrate, Sealdah together with the order passed by the learned Judicial Magistrate, Sealdah on 12.8.2008 directing the accused persons to appear at the time of hearing of the petition under Section 205 of the Cr.P.C.

Briefly stated, Asit Kumar Biswas, filed a petition of complaint against the accused persons alleging *inter alia* that in the wake of a civil suit being T.S. No. 335 of 2007 filed by Sri Biswas the accused persons on 10.6.2008 after wrongfully restraining the complainant, assaulted him with fists and blows and asked him either to withdraw the civil suit or be prepared to face dire consequences like kidnapping etc. by goons to be engaged by them. The incident was informed to the jurisdictional police station

and such information was diarized vide G.D. 717 dated 10.6.2008. The complainant then approached the learned Jurisdictional Magistrate and learned Magistrate was pleased to issue process upon the persons arrayed as accused.

Petition under Section 205 was filed by the accused persons after surrendering to the jurisdiction of the learned Judicial Magistrate and learned Judicial Magistrate, was pleased to direct the accused persons to appear by order dated 12.8.2008.

Mr. Kishore Mukherjee, learned senior counsel appearing on behalf of the petitioners submits that the prayer of the accused persons seeking exemption from personal appearance may be allowed and criminal revision may be disposed of granting liberty to the petitioners to urge all points taken at the time of trial before the learned Trial Court.

Mr. Mukherjee, learned counsel appearing on behalf of the opposite party no. 2 submits that law demands the presence of the petitioners at the time of hearing of the petition under Section 205 Cr.P.C. before the Court.

Upon plain reading of Section 205 of Cr.P.C., I do not find any such mandate, however, under Sub-Section 2 of Section 205, Cr.P.C. learned Judicial Magistrate shall have the authority to direct the personal attendance of the accused persons as and when required for the purpose of trial.

Under such circumstances, I am inclined to dispose of the criminal revision by setting aside the order passed by the learned

Judicial Magistrate on 12.8.2008 directing the accused persons to appear in person on the date of hearing of the petition.

The prayer for exemption from personal appearance is allowed subject to the provision of Sub-section 2 of Section 205 Cr.P.C.

Learned Trial Court is requested to dispose of the criminal proceeding as expeditiously as possible following the procedure prescribed for cases instituted otherwise than on police report under Part B of Chapter XIX of Cr.P.C.

Liberty is given to the petitioners to urge all points taken in the proceedings, before the learned Trial Court at the time of trial.

With this observation, the revisional application stands disposed of. Consequently, application being CRAN 1 of 2009 stands disposed of.

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

(Siddhartha Roy Chowdhury, J.)