

07.11
2024
I.No.109
Ct. No.
237.
sg

CRA (SB) 179 of 2023

**M/s. Shyam Ferro Alloys Ltd
Vs.
Maruti Metals & Anr.**

Mr. Soumya Nag,
Mr. Rajib Ghosh,
Mr. Ansuman Bhattacharya

.... For the petitioner.

Md. Shahajahan Hossain,
Mr. Akram Hossain

....For opposite parties.

This application has been preferred against an order dated 14.07.2022 passed by the learned Metropolitan Magistrate, 19th Court, Calcutta in case no. C.S. 8509 of 2017. By the impugned order learned Court below dismissed the petition of complaint on the ground of non-prosecution under Section 256 of the Code of Criminal Procedure.

It is submitted on behalf of the petitioner that petitioner lodged a complaint against the opposite party herein with the allegation that accused had issued a cheque in favour of complainant amounting to Rs.1 crore,62 lakhs 56 thousands, three hundred and thirty-five, which was not honoured. It is further submitted that due to ongoing Covid 2019 pandemic the normal functioning of the learned Court remains suspended leading to multiple adjournments in the case. The

authorized representative of the petitioner/company initially maintained regular contact with the learned Advocate representing the petitioner and the learned Advocate assured the authorized representative of the petitioner/company that he would promptly inform whenever the appearance before the learned Court below would be required. However, due to prolonged duration of the case and prevailing circumstances, a communication gap inadvertently arose between the learned Lawyer conducting the case and authorized representative of the petitioner/company and unfortunately on 23rd February, 2022 learned Advocate failed to take necessary steps and also could not inform the company about the next date and due to such non-appearance, Court below directed complainant to file show cause by 14th July, 2022 as to why the case shall not be dismissed for non-prosecution. On 14th July, 2022 since no step was taken, by the petitioner the case was dismissed for non-prosecution.

Learned Counsel appearing on behalf of the opposite party contended that the Covid 2019 pandemic was not prevailing at the time when the order of dismissal was passed and as such the petitioner can not take advantage of that situation. In fact, petitioner was not diligent in conducting the case, for which the Court below rightly invoked its jurisdiction under Section 256 of the Code of Criminal Procedure, which does not call for

interference by this Court.

I have considered the submissions made by both the parties. In view of the facts and circumstances of the case it appears to me that on the date of dismissal complainant was only asked to file reply to show cause and his personal attendance on that day was not required. In this case plea was taken and thereby hearing of the case opened.

In dishonor of cheque cases, the Court before invoking jurisdiction under Section 256 must consider, whether personal attendance of the complainant was essential on that day. If his personal attendance was not so much essential, instead of acquitting the accused without trial, accused could have been compensated by imposition of suitable costs. Exercise of discretion in such circumstances under Section 256 Cr.P.C. may not be a proper exercise of power, envisaged in the said section. When on the date of showing cause complainant's personal attendance was not essential, the Magistrate should not have viewed, the absence of the complainant as a short cut method of disposal of the case. Here the complainant has taken specific plea that due to prolonged covid pandemic situation, there was a communication gap between client and his counsel, which resulted his non-appearance. Magistrate ought to have considered, such background before acquitting the accused.

In such view of the matter the order impugned dated 14.07.2022 passed in C.S. 8509 of 2017 is hereby set aside.

Learned Court below is directed to hear the said criminal proceeding on merit and if possible to conduct the same by day to day trial and to conclude the entire proceeding preferably within a period of six months from the date of communication of this order, without granting any unnecessary adjournment to either parties.

Accordingly, Criminal Appeal being CRA (SB) 179 of 2023 stands disposed of.

(Ajoy Kumar Mukherjee, J.)