

ITEM NO.5

COURT NO.3

SECTION II

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRLMP. 4746/2004

Petition(s) for Special Leave to Appeal (Crl)... 2004

(From the judgement and order dated 20/02/2004 in CRR No.1909/2001
of HIGH COURT OF CALCUTTA)

RAMPRASAD SAHA

Petitioner

(s)

VERSUS

KAMAL KUMAR TALUKDAR & ANR.

Respondent

(s)

(Office report for directions)

Date: 01/11/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Petitioner(s) Mr. Vijay Hansaria, Sr.Adv.
Mrs. Madhumita Bhattacharjee, Adv.
Mr. Atanu Saikia, Adv.
Mr. Avijit Bhattacharjee, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

On 6th May, 2004, rejecting application for grant of exemption from surrendering, the petitioner was granted four weeks time to surrender and file proof thereof. The petitioner has not

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surrendered till date. On the contrary, it appears that the petitioner approached the Court of Sub-Divisional Judicial Magistrate, Alipurduar, and obtained an order of bail from that Court, presumably, on the ground that some order of stay has been passed by this Court. If not, there was no question of Magistrate directing release of the petitioner on bail. Having regard to the fact that the conviction of the petitioner, under Section 138 of the

Negotiable Instrument Act, recorded by the Court of Magistrate
having been affirmed by the High Court in Revision Petition No.1909
of 2001 by judgment and order dated 20th February, 2004, whereby
confirming the sentence for a period of three months, the petitioner
was directed to surrender before the trial court to serve out the
sentence of imprisonment within two months, failing which the trial
court was directed to take appropriate steps in accordance with law,
the Magistrate had no jurisdiction, whatsoever, to grant bail to the
petitioner. It is this order dated 20th February, 2004 which is
under challenge in this petition filed on 15th April, 2004. The
petitioner was directed by the Magistrate in terms of Order dated
18th August, 2004 to file certified copy of the stay order granted
by this court. It is evident that inspite of the fact that no stay
was granted a mis-representation was made before the trial court and
bail secured. Under these circumstances, we decline to further
extent the time for surrendering to the petitioner who has not
surrendered till date. It goes without saying that the trial court
would take immediate appropriate steps to ensure that the petitioner

is sent to custody to serve out the remaining period of sentence.

The petition is dismissed.

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(S. Thapar)

PS to Registrar

(V.P. Tyagi)

Court Master