

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

Petition(s) for Special Leave to Appeal (Crl) No(s).6245/2009

(From the judgement and order dated 01/08/2008 in
of the HIGH COURT OF CALCUTTA)

CRR No. 1442/2008

YIN CHENG HSIUNG

Petitioner(s)

VERSUS

M/S. ESSEM CHEMICAL INDUSTRIES

Respondent(s)

(With appln(s) for stay, with Crl.M.P.No.2180/2011 - Application for
permission to file additional documents)

Date: 31/01/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Mr. Jay Sengupta,Adv,
Mr. Subhasish Bhowmick,Adv.
Mr. S.C. Patel,Adv.

For Respondent(s) Mr. Debal Banerjee,Sr.Adv.
Mr. Rishi Maheshwari,Adv.
Mr. P.S. Sudheer,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The Appeal is allowed in terms of the signed order.

(Sukadev Sarangi)
A.R.-cum-P.S.

(Juginder Kaur)
Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.284 OF 2011.
(Arising out of S.L.P.(crl.)No.6245 of 2009)

Yin Cheng Hsiung

Appellant

Versus

M/s. Essem Chemical Industries

Respondent

O R D E R

Leave granted.

This appeal is directed against the judgment and order dated 1.8.2008 passed by the Calcutta High Court in C.R.R. No.1442 of 2008, disposing of the appellant's revision application under Section 401 read with Section 482 of the Code of Criminal Procedure and rejecting his prayer for discharge and for quashing the proceedings in connection with Case No.C-1066 of 2005 pending before the 8th Metropolitan Magistrate, Kolkata, under Sections 138/141 of the Negotiable Instruments Act, 1881. The appellant's prayer for discharge having been rejected by learned Metropolitan Magistrate, since summons had been issued, the High Court upheld the said order and did not interfere with the same.

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As far as the prayer made under Section 482 of the Code of Criminal Procedure is concerned, the High Court accepted the submissions made on behalf of learned Advocate appearing for the respondent that the contentions raised by the appellant to the effect that he had no concern with the day to day running of the partnership business and that he was staying abroad during the relevant period, would have to be considered by the trial court at the appropriate stage of the trial.

Having heard learned counsel for the parties, we are unable to sustain the second part of the order passed by the High Court since, in our view, the appellant herein was entitled to show at the initial stage when plea had not yet been taken, that he was in no way responsible for the day to day management of the business and that he was not

in India when the offence is said to have been committed.

Having regard to the above, and having particular regard to the observations made by this Court in State of Haryana & Ors. v. Bhajan Lal & Ors. [1992 Supp. (1) SCC 335] , we make it clear that the High Court should examine the entries in the appellant's passport for determining the aforesaid question since it is the appellant's case that he left India in January, 2003, and has not returned to India thereafter. Accordingly, we allow this appeal to the aforesaid extent. We request the High Court to dispose of the matter afresh, if possible within a period of three months from the date of communication of this order. In the

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event the appellant is not able to produce the entries from the passport within the said period, the High Court will be at liberty to dispose of the matter in such manner as it deems fit. The order dated 11.9.2009 staying the proceedings before learned Metropolitan Magistrate against the appellant, is extended until further orders by the High Court.

.....J
(Altamas Kabir)

.....J
(Cyriac Joseph)

New Delhi,
January 31,2011.