

# SUPREME COURT OF INDIA

Ram Prasad Saha

Vs.

Kamal Kumar Talukdar

(Y. K. Sabharwal and D. M. Dharmadhikari JJ.)

01.11.2004

## ORDER

1. 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 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.

2. 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 misrepresentation was made before the trial court and bail secured. Under these circumstances, we decline to further extend 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.

3. The petition is dismissed.