

## Arun Kumar Vs Raju Raheman and Others

**Court:** Calcutta High Court

**Date of Decision:** Jan. 30, 2009

**Hon'ble Judges:** Arunabha Basu, J

**Bench:** Single Bench

**Advocate:** Amit Bhattacharjee, Mr. Sandipan Ganguly, Mr. Ayan Bhattacharjee and Mr. Indrajit Adhikari, for the Appellant; Barin Roy, for the Respondent

### Judgement

Arunabha Basu, J.

The revisional application is directed against the order dated 18th January, 2008 passed by the Id. Metropolitan

Magistrate, 11th Court, Calcutta in connection with Complaint Case No. 1621 of 2007 whereby and where under the Id. Court below refused to

admit a question put to the witness being the PW1 which runs as follows, ""Do you knew they would not pay when you still supply goods"".

2. It is the contention of the Id. Advocate for the petitioner that the Id. Court below by passing an elaborate order refused to record the question

and thereby violated the decision of the Supreme Court in the case of Bipin Shantilal Panchal v. State of Gujarat, 2001 (3) SCC 1. The Hon"ble

Apex Court in its three Judges Bench decision took into consideration about archaic practice being followed in the lower courts where elaborate

and lengthy arguments are advanced before any evidence is admitted. The resultant delay in conclusion of trial was taken serious note by the

Hon"ble Apex Court and the Hon"ble Apex Court prescribed a procedure about admission of evidence and the same is set out below:

It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in

evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial

court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and

disposes of the case finally. If the appellate or the revisional court, when the same question is reconvicted, could take a different view on the

admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record

by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to

dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when

realized through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or

remolded to give way for better substitutes which would help acceleration of trial proceedings.

3. The procedure that is required to be followed when such contingency arises before a court of law is prescribed in the guideline recorded by the

Supreme Court at Paragraph 14 of the aforesaid judgment and same is set out below:

When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the

admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively

as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final

judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded

from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency

of stamp duty of document the court has to decide the objection before proceeding further. For all other objections the procedure suggested

above can be followed).

4. The Hon"ble Apex Court also took into consideration that if such procedure is followed, then the time in the trial court during evidence-taking

stage would not be wasted on account of raising such objections and the court can continue to examine the witnesses. Secondly, before the

superior court when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can

determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court against

for fresh disposal.

5. The afore-mentioned direction of the Hon"ble Apex Court was not considered by the Id. Court below and as such, the order passed by the Id.

Court below is hereby set aside. The Id. Court below is directed to follow the procedure directed by the Hon"ble Apex Court in the case of Bipin

Shantilal Panchal (Supra) as highlighted above during the stage of recording evidence.

6. With this direction, the revisional application is disposed of and the order dated 18th January, 2008 as passed by the Id. Court below is hereby

set aside. The Id. Court below is directed to recall the PW1 and resume examination of the said witness from the stage before rejecting the

question as reflected in the order dated 18th January, 2008. Id. Court below is further directed to proceed with the trial as expeditiously as

possible without granting any unnecessary adjournment to any of the parties.

7. In view of the disposal of the revisional application, no separate order is required to be passed on the application being CRAN 3052 of 2008

and the same stands disposed of along with the revisional application.

8. Affidavit of service filed in court today. Same be kept with the record.

9. Criminal Section is directed to forward a copy of the order to the Id. court below as early as possible.

10. Criminal Section is directed to supply urgent Photostat copy of the order to the Id. Advocate for the petitioner as and when applied for.