

Sr.204
30-09-2021
Subha.
Court no. 34

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE
(Via Video Conference)**

CRR 1512 of 2018

In the matter of : Itika Chakraborty and Anr.petitioners.

In Re : An application under Section 482 of the Code of Criminal Procedure.

Mr. Pallab Mohan Chakraborty
.....for the petitioners.

Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupa
....for the State.

Affidavit of service and supplementary affidavit filed by the petitioner be kept with the record.

Report submitted by the Inspector-in-Charge, Nabadwip PS, Krishnanagar P. D be kept with the record. The Report so submitted reflects that the complainant/opposite party was served on 1st September, 2021.

The compliant being C. R. Case No. 33 of 2017 which is a subject matter of the case involves the complainant who is from the District of Nadia and the accused persons one of whom the accused no. 1(the petitioner before this court who happens to be from Serampore, District of Hooghly).

In view of the dictum of the Hon'ble Supreme Court in the case of *National Bank of Oman vs. Barakara Abdul Aziz and Anr. Reported in 2013 (2) SCC 488* and *Abhijit Power vs. Hemant Madhukar Nimbalkar & Anr.* reported in (2017) 3, SCC 528, I am of the view that the learned Magistrate before issuing process should have conducted an enquiry regarding the veracity of the allegations under Section 202 of the Code of Criminal Procedure.

Learned advocate appearing for the petitioners as also for the State have drawn the attention of this court to the order dated 27.02.2017. Record reflects that no enquiry was conducted by the learned Magistrate while issuing process.

Having regard to the settled principles of law as pronounced by the Hon'ble Apex Court, the learned Magistrate is directed to conduct an enquiry under Section 202 of the Code of Criminal Procedure before arriving at a conclusion whether the case should be proceeded under 203 of the Code of Criminal Procedure or under Section 204 of the Code of Criminal Procedure.

In view of the aforesaid observations, all orders subsequently passed by the learned Magistrate including the order dated 22.02.2017 is hereby quashed.

The learned Magistrate would afresh consider the issuance of process taking into account the judgement delivered by the Hon'ble Apex Court in *National Bank of Oman*(Supra) and *Abhijit Power*(Supra) and proceed accordingly.

Accordingly, the present revisional application being CRR 1512 of 2018 is partly allowed.

All pending applications, if any, in connection with revisional application, are consequently disposed of.

Interim order, if any, is hereby vacated.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)