

09.09.2021
item No.86
n.b.
ct. no. 34

CRR 2562 of 2016
With
CRAN 2 of 2017(not here)
(via video conference)
Sakti Kanta Chhotray
Vs-
State of West Bengal & Anr.

Mr. Pritam Priyo Dasgupta,
Mr. Amit Dey .. for the petitioner.

Mr. Devipriyo Mitra ...for the State

The revisional application has been preferred challenging the proceedings arising out of complaint case no. C-8061 of 2013 pending before the learned Judicial Magistrate, 5th Court, Alipore.

I have perused the allegation made in the complaint as also the orders passed by the learned Magistrate. I find that the petitioner before this Court carries on business and reside at Bhubaneswar, Orissa. Learned Magistrate initially directed for an enquiry to be conducted under Section 202 of the Code of Criminal Procedure.

Order dated 9.10.2013 however reflects that without any report having reached, process was issued by an order dated 28.1.2014. Having regard to the settled position of law as spelt out by the Hon'ble Apex Court in cases National Bank of Oman Vs. Barakara Abdul Aziz & Anr. reported in (2013) 2 SCC 488 and Abhijit Pawar Vs. Hemant Madhukar Nimbalkar & Anr. reported in (2017)3 SCC 528 an interference is called for.

In my view the cases where the accused persons are staying outside the jurisdiction of the learned Magistrate, the learned Magistrate ought to have exhausted the provisions of Section 202 of the Code of Criminal Procedure as settled by the Hon'ble Apex Court.

In view of the aforesaid, I direct the learned Magistrate to adhere to the provisions of law as incorporated under Section 202 of the Code of Criminal Procedure. Consequently, the order of issuance of process is set aside. The learned Magistrate would in the circumstances direct the concerned police station to conduct an enquiry under Section 202 of the Code of Criminal Procedure. The present petitioner before this Court would join such an enquiry / investigation being carried out by the concerned Officer in charge in terms of Section 202 of the Code of Criminal Procedure. If it is found that any notice issued by the officer in charge upon the petitioner is evaded purposely, the learned Magistrate will accept the report of the officer in charge and proceed with the case in accordance with law. Any, such enquiry must be completed by 31st December, 2021.

C.R.R. No. 2562 of 2016 is partly allowed.

Pending application, if any, stands disposed of.

Interim order, if any, stands vacated.

Learned Magistrate is directed to act in terms of the order referred to above.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)