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24.08.2021
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**CRR 3117 of 2019
With
CRAN 1/2020 + CRAN 2/2021**

**Dinanath Jhunhunwala & Ors.
-vs-
The State of West Bengal & Anr.**

**Mr. Soumya Nag
Mr.Subhadip Adhikari
... for the petitioner No. 1 2 & 4.**

**Mr. Ayan Bhattacharya
Mr. Apalak Basu
Mr. Cedric Fernandez
... for the petitioner no. 3.**

**Mr. Rana Mukherjee
Mrs. Debjani Sahoo
... for the State**

Mr. Bhattacharya, learned advocate appearing for the petitioner no. 3 files an affidavit of service which is kept with the record.

Having regard to the nature of the order required to be passed in the instant case the presence of the opposite party no. 2, may not be warranted. It has been settled by the Hon'ble Apex Court in a catena of Judgements (National Bank of Oman -vs- Barakara Abdul Aziz (2013) 2 SCC 488 and Abhijit Pawar -Vs- Hemant Madhukar Nimbalk (2017) 3 SCC 528) regarding the requirement of Section 202 of the Code of Criminal Procedure. Order sheets enclosed along with the revisional application reflects that immediately after examination of the complainant and witnesses under section 200 of the Code of Criminal Procedure the learned Magistrate was pleased to issue process so far as the present petitioners are concerned. Although they

were residing outside the territorial jurisdiction of the concerned Court. As the law has been settled by the Hon'ble Apex Court this Court is of the view that the procedure must be adhered to as spelt out by the Hon'ble Supreme Court.

Accordingly, the order dated 27.05.2019 and all subsequent orders passed by the learned Metropolitan Magistrate, 19th Court at Calcutta in connection with CS/19632 of 2019 is set aside.

The learned Magistrate would comply with the provisions of Section 202 of the Code of Criminal Procedure and thereafter proceed to the next stage of the case by taking into account whether the issuance of process is required or not.

With the aforesaid observation, CRR 3117 of 2019 is allowed.

All pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

The learned Magistrate will comply the process of enquiry under Section 202 of the Code of Criminal Procedure within a period of three months from the date of communication of this order.

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

(Tirthankar Ghosh, J.)