

28-07-2021
Item no.45
Subrata

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR No.3094 of 2012
Sri Tribhuwan Nath Jaiswal
-vs-
The State of West Bengal & Ors.
with
CRAN No.2 of 2019
(Old CRAN No.1387 of 2019)

Mr. Anupam Kumar Bhattacharya, adv.
Mr. Sujit Mitra, adv.
Mr. Mrityunjay Saha, adv. ...for the petitioner

Mr. S.G. Mukherjee, PP
Mr. Madhusudan Sur, APP
Mr. Manoranjan Mahata, adv. ... for the State

Learned advocate appearing for the petitioner submits that in connection with Complaint Case No.C518/12 learned ACJM, Sealdah, South 24 Parganas was pleased to take cognizance of the offence on August 7, 2012 and thereafter transferred the case to the learned Judicial Magistrate, 2nd Court, Sealdah. On August 8, 2012 the learned Judicial Magistrate fixed August 22, 2012 for examination under section 200 CrPC.

Records reflect that the complainant was examined under section 200 CrPC on August 22, 2012. Surprisingly and very rightly pointed out by learned advocate for the petitioner that if the examination under section 200 CrPC was conducted on August 22, 2012, how could the learned Magistrate record "The accused is also absent by petition". By the same order it is also reflected that the learned Magistrate was pleased to fix the matter for "S/R" (service return) on September 10, 2012.

In my view, the order dated August 22, 2012, which has been passed by the learned Magistrate, is without any application of mind. It is expected that only after examination under section 200 CrPC is

conducted, the Magistrate was supposed to issue summons to the accused persons, provided he was satisfied with the allegations made in the complaint and the deposition under section 200 CrPC. There is no role of the accused prior to issuance of process. As such, the said order ex facie suffers from illegality and is liable to be set aside.

Accordingly, the order dated August 22, 2012 passed by the learned Magistrate is hereby set aside. Learned Magistrate will consider afresh the allegations made in the complaint, the examination of the complainant under section 200 CrPC and thereafter decide whether process is to be issued against the accused persons.

With the above observations, CRR No.3094 of 2012 stands partly allowed.

Any connected application, if pending, is consequently disposed of.

Interim order, if any, stands vacated.

Lower court records (LCR), if any, be sent back forthwith.

The department is directed to communicate this order to learned court below within a period of seven days.

All parties shall act on the website copy of this order, duly downloaded from the official website of this court.

[Tirthankar Ghosh, JJ]

