

17.08.2021
Item no.30
Ct. No.34
CHC

C.R.R. No.3715 of 2019
(Via Video Conference)

In Re: An application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

AND

In the matter of:-

M/s Makum Motors (Makum)
... petitioner

Mr. Uday Sankar Chattopadhyay,
Mr. Santanu Maji,
Ms. Snigdha Saha,
Ms. Payel Shome,
Mr. Pronay Basak
...for the petitioner

Mr. Souritra Ganguly,
Ms. Tanushree Roy
...for the opposite party no.2

Pursuant to the order passed by this Court lower court records have been received.

Learned advocate for the opposite party no.2 has drawn the attention of this Court. Learned advocate has tried to emphasise on the fact that the allegations in the complaint if taken at its face value *prima facie* fails to make out any case so far as the opposite party no.2 is concerned. I have considered such submission but I reiterate that I have not gone into the merits of

the case as the accused/opposite party no.2 is yet to enter appearance before the learned Magistrate.

The order passed by the learned Metropolitan Magistrate, 11th Court, Calcutta, dated 20.07.2015 reflects as follows:-

“Complainant is absent on repeated calls without taking any steps.

It is now 12:45 p.m. None appears on behalf of the complainant.

Perused the case record.

After perusal of the case record it appears before me that there is absence of sufficient ground to issue process.

Hence, the instant case be dismissed U/s-203 of the Cr.p.c.”

The order reflects that the complaint was dismissed for non-appearance of the complainant.

However, learned Magistrate dismissed the complaint under Section 203 of the Code of Criminal Procedure. It is apposite to state that the provisions of Section 203 of the Code of Criminal Procedure can be invoked only after the Magistrate enters into the merit of the case for deciding whether a *prima facie* case has been made out or not and then only invoke the provisions under Section 203 of the Code of Criminal Procedure. On the contrary, if the learned Magistrate is of the opinion that because of non-appearance of the complainant a case is to be dropped or dismissed then in that case the provisions of Section 256 of the Code of Criminal Procedure are to be invoked. The order dated 20.07.2015, *ex facie* reveals non application of mind of the

learned Magistrate while considering relevant provisions of the law.

In view of the aforesaid, I am of the considered view that interference is required by this Court.

The present petitioner has approached the sessions court in its revisional jurisdiction but the learned sessions court refused to condone the delay and as such, the revisional application was not heard out on merits. Be that as it may, a case is to be appreciated on totality of circumstances. The complainant filed the case in the jurisdictional court when the same was pending because of the judgement of the Hon'ble Apex Court the complaint case was transferred from one State to another State. The complainant, presumably was not prepared to conduct the case in a different State but was compelled because of the jurisdiction settled at the relevant point of time by the Hon'ble Apex Court. The learned Magistrate should have appreciated at the relevant point of time, the difficulties faced by the holder in due course of a cheque in pursuing a litigation in a different State for which may be he was not mentally prepared. So far as the learned sessions court is concerned, the learned sessions court while considering the application under Section 5 of the Limitation Act should have appreciated the case with a much more human face than adhering to the rigour of the law. Needless to state that the case was initiated in the year 2001 and today in 2021 also the process has not been issued. This Court while disposing of the revisional application do not intend to enter into the merits of the case but grants opportunity to the

complainant to present its case before the jurisdictional court. Consequently, the order passed by the learned Metropolitan Magistrate, 11th Court, Calcutta, on 20.07.2015 as also the order dated 18.11.2019 passed by the learned Chief Judge, City Sessions Court, Calcutta, in Criminal Revision No.220 of 2018 is hereby set aside.

The petitioner will be at liberty to bring this order to the notice of the learned Metropolitan Magistrate, 11th Court, Calcutta, who will presently decide the issue of jurisdiction and proceed accordingly.

Accordingly, C.R.R.3715 of 2019 is allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

Department is directed to send the LCR to the learned Metropolitan Magistrate, 11th Court, Calcutta forthwith, preferably by 25th August, 2021.

The complainant is directed to be present before the learned Metropolitan Magistrate, 11th Court, Calcutta on 20th September, 2021.

The complainant is directed to take steps on merits of the case and be present physically.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)