

Court No. 33
Item 23
sk
18.8.2022

CRR 22 of 2017

IA No. CRAN/2/2017(Old No. CRAN/999/2017)

In the matter of:-Sarvesh Refractories Ltd. & Ors.
..... **Petitioner.**

An application under Section 482 of the Code of Criminal Procedure.

Mr. Narayan Prasad Agarwal

Mr. Pratick Bose

....for the State.

None appears on behalf of the petitioners.

The petitioners have preferred the present revisional application for quashing of proceeding being CS/111633 of 2016 under Sections 406/418/420/120B of the Indian Penal Code pending before the court of the learned Metropolitan Magistrate, 19th Court at Calcutta.

The brief fact of the case is that the opposite party no. 2, filed a complaint before the Chief Metropolitan Magistrate at Calcutta under Sections 406/418/420/120B of the Indian Penal Code and the learned Court took cognizance of the offence and transferred the case to the file of the learned Metropolitan Magistrate, 19th Court at Calcutta for enquiry and disposal. The learned trial Magistrate examined the complainant and other witnesses under Section 200 of Cr.P.C. on S.A. and issued process against the accused persons under Sections 406/418/420/120B of the Indian Penal Code.

Being aggrieved by and dissatisfied with the said proceeding, the petitioners have preferred the present revisional application.

Mr. N.P.Agarwal along with Mr. Pratick Bose, learned

advocates appear on behalf of the State.

On perusal of the petition of complaint, it appears that the petitioners, who are arrayed as accused persons, are of Orissa and Bhillai which is outside the territorial jurisdiction of the learned Magistrate.

Section 202 of the Code of Criminal Procedure provides as hereunder:

“202:- Postponement of issue of processes-(1)
Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding”.

A Division Bench of this court in **S.S.Binu Versus State of West Bengal and another** and other batches of petitions reported in **2018 Cri LJ 3769** held that the amendment of sub-section (1) of Section 202 of the Code of Criminal Procedure is aimed to prevent innocent persons who are residing outside the territorial jurisdiction of the learned Magistrate concerned from harassment by unscrupulous persons from false complaints and the use of expression “shall” is a mandatory one before issuance of summons against the accused living beyond the territorial jurisdiction of the Magistrate. After the amendment of Code of Criminal Procedure by the Amendment Act of 2005, it is settled that

with regard to private complaint, it is mandatory for the trial Magistrate to postpone the issue of process against the accused persons when they are outside its territorial jurisdiction and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.

Although the heading of deposition of one witness Anupam Mallick show that examination has been done under Section 202 of Cr.P.C. yet order-sheets of the trial Court annexed to the application does not reveal that proper enquiry was undertaken in consonance with the provisions of Section 202 of Cr.P.C. It seems that both complainant and its witness were examined on the same date. Thus the procedure adopted by the learned Magistrate falls short of mandate of law provided under Section 202 of Cr.P.C. Such mandatory provisions should be strictly followed and should not be made an empty formality.

As it is found from the petition of complaint the petitioners-accused persons are of Orissa and Bhillai, which is outside the territorial jurisdiction of the trial Magistrate i.e. learned Metropolitan Magistrate, 19th Court at Calcutta, the Magistrate concerned before issuing summons against the petitioners of outside its territorial jurisdiction should have

adhered to the provisions of Section 202 of Cr.P.C. either by enquiring himself or directing an investigation to be made by the police officer or by any person he deems fit.

In the case of **Narmada Prasad Sonkar alias Ramu versus Sardar Avtar Singh Chabara and others**, reported in **(2006) 9 SCC 601**, the Hon'ble Supreme Court have held as follows:

"If the Magistrate had not followed the procedure and has failed to apply his mind as required by law, the order issuing process could be quashed but the Magistrate should be directed to reconsider the matter and pass fresh order in accordance with law".

As it is found that there are procedural irregularities, the impugned order dated 03.10.2016 issuing process against the petitioners, passed by the learned Metropolitan Magistrate, 19th Court at Calcutta is hereby set aside.

Accordingly, the revisional application being **CRR 22 of 2017** stands disposed with direction upon the concerned Magistrate for causing enquiry in terms of Section 202 of Cr.P.C. and thereafter decide whether or not there is sufficient ground for proceeding and shall reconsider the matter pertaining to said complaint and pass a fresh order on it in accordance with law.

The application being CRAN 2 of 2017 (old CRAN 999 of 2017) also stands disposed of.

All connected applications stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Bivas Pattanayak, J.)