

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 401 of 2022

**Md. Imranuddin Siddique
-Vs.-
Jharna Das**

**For the Petitioner : Mr. Sabir Ahmed
Mr. Mujibor Ali Naskar
Mr. Shraman Sarkar**

**For the Opposite Party : Mr. Dipanjan Datta
Mrs. Rituparna Saha**

Heard & Judgment on : 20.06.2022

Bibek Chaudhuri, J.

The petitioner being the accused of complaint Case No. 84 of 2017 under the charge of Sections 420/406/506/34 of the IPC read with Section 93 of the Code of Criminal Procedure has come up before this Court for quashing of the abovementioned proceeding pending in the Court of learned Judicial Magistrate, Second Court of Barrackpore. He has also challenged the order dated 15th December,

2021 being illegal, irregular and passed beyond the jurisdiction of learned Magistrate.

Brief fact leading to the filing of the instant proceeding is that the opposite party was the registered owner of a Scorpio S-10 car. She produced the said car taking loan from HDFC Bank. The accused agreed to purchase the said car at a consideration of Rs, 10 lakhs. In order to purchase the said car, the accused brought a non judicial stamp paper and prepared an agreement dated 14th November, 2016 to the effect that the complainant would obtain NOC from the petitioner bank within ten days after receiving the full and final price amount of the said Scorpio car from the accused/petitioner. On 16th November, 2016, the accused paid a sum of Rs. two lakhs and the remaining sum of Rs. eight lakhs remained due. After making such payment, the accused took the said car from the complainant for test drive. Subsequently, he did not return the said car. He also failed and neglected to pay the rest amount of Rs. eight lakhs and thereby committed offence under Section 420/406/506/34 of the IPC. It is found from the record that previously the accused moved this Court in CRR 2162 of 2017 and a co-ordinate Bench passed an order dated 22nd September, 2021 directing the complainant to appear before the learned Magistrate, Second Court at Barrackpore for examination under Section 200 of the Code of Criminal Procedure. It is also directed that the whole exercise record under

Section 203/204 of the Cr.P.C. as also Section 97 of the Cr.P.C. should be completed by 31st December, 2021.

After the said order having passed, the complainant was examined on solemn affirmation on 15th December, 2021. After examination of the complainant and on perusal of the documents, the learned Magistrate issued process under Section 204 of the Cr.P.C. against the accused to face charge under Section 420/406/506/34 of the Cr.P.C. The said order is under challenge in the instant criminal revision.

It is submitted by Mr. Sabir Ahmed, taking me to an agreement executed by and between the complainant and the accused on 18th November, 2016 that by virtue of the said agreement, the complainant sold out the car at Rs. ten lakhs and she also agreed to liquidate the entire loan amount lying due on HDFC Bank to change the name of the owner of the car in the name of the accused/petitioner. It was also settled that the consideration price was Rs. ten lakhs. The petitioner has also produced a money receipt of Rs. ten lakhs where the complainant put her signature on the revenue stamp in presence of witnesses. It is also submitted by Mr. Ahmed that the opposite party already executed form Nos. 28, 29 and 30, which are required for transferring the name of the subsequent owner in respect of the vehicle.

It is the allegation of the opposite party that the complainant did not make payment of her dues with HDFC Bank. She

misappropriated the entire money. The accused also lodged a complaint before the Officer-in-Charge, Belghoria Police Station on 3rd March, 2017 and also before the Officer-in-Charge, Jangipara Police Station on 15th April 2017. It is submitted by Mr. Ahmed that the learned Magistrate issued process against the accused directly under Section 204 of the Cr.P.C. without considering the fact that the accused resides outside the jurisdiction of Belghoria Police Station, and in such case he ought to have taking recourse to Section 202 of the Cr. P.C. and report ought to have obtained from the police officer before the issuance of process.

It is submitted by learned advocate for the opposite party refuting the arguments of Mr. Ahmed that this is a second round of litigation before this Court. As per the order of this Court passed in C.R.R. 2162 of 2017, the Trial Court issued process against the accused on examination of the complainant on solemn affirmation.

The case of the complainant is that negotiations to sell the car in question was made between the complainant and the accused/petitioner in presence of the officers and employees of HDFC Bank. It was agreed by and between the parties that the petitioner would deposit the entire sale proceed directly to the bank to square up the dues of the complainant, but he did not. Subsequently, after payment of a sum of Rs. two lakhs, he took car for test drive. When the complainant/opposite party handed over the car, the file containing all documents including blanket money

receipt was kept inside the car. The accused converted the same blanket documents into valuable receipt and other documents in support of his case only to deceive and deprive the complainant from getting her lawful claim.

Having heard the learned advocate for the parties, I am not unmindful to record that it is somewhat a strange proposition, which the learned advocate for the opposite party invites me to consider that a person being the owner of a car would leave a blanket money receipt after putting his signature on the revenue stamp affixed thereon.

When the said documents came to the hands of the accused, the complainant did not lodge any complaint making such grievance. Moreover, in the petition of complaint, which was registered as C 84/2017, all these facts have not been stated.

Under such circumstances, this Court is of the considered view that before issuance of process, the learned Magistrate ought to have obtained a report from the local police station under Section 202 of the Cr.P.C.

In view of the above discussion, the impugned order dated 15.12.2021 is set aside.

Learned Magistrate is directed to send the complaint and other materials on record to the officer in charge of the jurisdictional police station for obtaining a report under Section 202 of the Cr.P.C.

within a period of one month from the date of communication of this order.

(Bibek Chaudhuri, J.)