

22.12.2022
S/L No.35
KS

C.R.R. 411 of 2021
Sonara Nayanaben @ Nayna Mahesh Sonara & Ors.
-Vs.-
Shri Ram Insight Share Brokers Limited

Mr. Tapas Mukhopadhyay
Md. Malik Uddin
Mr. Manojit Chatterjee
.....For the Petitioners
Mr. Niranjana Kumar Singh
.....For the O.P.

Heard learned advocates appearing for the petitioners as well as the complainant/private opposite party.

I have considered the averments made in the petition of complaint which are relating to transactions. The case has been filed before the Learned A.C.J.M., Bidhannagar, Kolkata which was thereafter transferred to the Learned Judicial Magistrate, Bidhannagar. The order dated 08.08.2019 reflects that the Learned Magistrate was pleased to examine the complainant under Section 200 of the Code of Criminal Procedure by way of an affidavit and thereafter, the Learned Court was pleased to hold, prima facie, offences being made out under the Indian Penal Code and issued process.

Records reflect that the complainant is having its registered office at Chennai. The accused persons are all from Gujarat and the jurisdictional Court chosen is at Learned A.C.J.M., Bidhannagar. The other issue which is disturbing in a case under alleged offences under

the Indian Penal Code is that the Learned Magistrate has relied upon an affidavit filed by the complainant. The nature of the allegations complained of in the petition of complaint, the manner in which the initial evidence was recorded and relied upon for issuance of process against the accused persons are not in accordance with the settled proposition of law. The Hon'ble Supreme Court in *National Bank of Oman Vs. Barakara Abdul Aziz & Anr.* reported in (2013) 2 SCC 488 till date has on umpteen occasion directed the Learned Magistrate that in case of proposed accused persons staying outside the territorial jurisdiction of the court, strict adherence to the provisions of Section 202 of the Code of Criminal Procedure must be made. Learned Judicial Magistrate without adhering to the same and only on perusal of the petition of complainant and the affidavit filed by the complainant decided to proceed with the case under Section 204 of the Code of Criminal Procedure.

Having regard to the manner in which the process has been issued in the instant case, I am of the opinion that the order dated 08.08.2019 passed by the Learned Judicial Magistrate, Bidhannagar is against the settled proposition of law and, as such, is liable to be set aside.

The complainant would adduce evidence, the Learned Magistrate will adhere to the provisions of Section 202 of the Code of Criminal Procedure to assess the very purpose for which the said section was pressed into operation for persons staying outside the limits of the

jurisdictional Court and thereafter decide to progress either under Section 203 of the Code of Criminal Procedure or Section 204 of the Code of Criminal Procedure.

Accordingly, C.R.R. 411 of 2021 is partly allowed.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)