

12.12.2022

Item No.41
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

**C.R.R. 1806 of 2021
with
CRAN 3 of 2022**

**Smt. Susmita Bhowal & Ors.
versus
Sri Kajal Bhowal**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

Mr. Krishnendu Bhattacharya,
Mr. Rajib Mullick,
Mr. Priyankar Ganguly,
Ms. Sonia Mukherjee,
Ms. Shalini Bairagi,
Mr. Deep Bairagi ... For the Petitioners.

Mr. Sarbesh Pal ... For the Opposite Party.

This revisional application was preferred challenging the proceedings being Complaint Case No. CNS 502/2020 pending before learned Metropolitan Magistrate, 19th Court, Calcutta under Sections 406/458/120B/504(II) read with Section 34 of the Indian Penal Code.

The subject-matter of dispute relates to a sibling/relationship rivalry wherein the complainant has alleged that a part of portion of the premises relating to premises No.2, Ramnath Biswas Lane, P.S. Amherst Street, Kolkata-700009 was occupied by him and another part was occupied by the accused/petitioners. It has been alleged by the complainant that the portion which has been occupied by him was trespassed by the accused/petitioners. On such foundation process was prayed for.

Mr. Bhattacharya, learned advocate appearing for the accused/petitioners submits that admittedly in this case process was issued without complying with Section 202 of the Code of Criminal Procedure as process has been issued against the accused persons who are staying outside the jurisdiction of the learned Metropolitan Magistrate, 19th Court, Calcutta.

Mr. Pal, learned advocate appearing for the complainant/opposite party opposes such contention of the petitioners and submits that the property in dispute is situated within the jurisdiction of the learned Metropolitan Magistrate, 19th Court, Calcutta.

I have considered the submissions of the learned advocates appearing for the parties. I find that so far as the complainant/opposite party is concerned, his main grievance is that the accused persons have criminally trespassed into his premises and the said premises is within the jurisdiction of the learned Chief Metropolitan Magistrate, Calcutta/learned Additional Chief Metropolitan Magistrate, Calcutta. However, having regard to the decision of the Hon'ble Supreme Court in ***National Bank of Oman Vs. Barakara Abdul Aziz and Another*** reported in ***(2013) 2 Supreme Court Cases 488***, I am of the opinion that prior to issuance of process, it was incumbent upon the learned Magistrate to check both the authenticity of the allegation and the complicity of the accused/petitioners in relation to the alleged offences. Accordingly, the order dated 02.02.2021 passed by the learned Metropolitan Magistrate, 19th Court, Calcutta is set aside.

Although the order of taking cognizance by the learned A.C.M.M.-II, Calcutta is hereby affirmed.

Learned Magistrate as such, is directed to conduct an enquiry in accordance with the provisions of Section 202 of the Code of Criminal Procedure and thereafter decide whether to proceed under Section 203 of the Code of Criminal Procedure or under Section 204 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 1806 of 2021 is disposed of.

Interim order, if any, is hereby vacated.

Pending connected application is consequently disposed of.

Written notes of argument filed on behalf of the petitioners be kept on record.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)