

11.05. 2022
item No.12
n.b.
ct. no. 34

CRR 1894 of 2021
Ruma Nag & Ors.
Vs.
Dr. Swarnendu Mitra

Mr. Brajesh Jha,
Mr. Ravi Ranjan Kumar,
Mr. Saket Sharma
.....for the petitioner

Mr. Saswata Gopal Mukherjee, P.P.
Ms. Manisha Sharma
.....for the State

Mr. Tapan Datta Gupta,
Mr. Parvej Alam
.... For the opposite party

The present revisional application has been preferred by the petitioners pursuant to process being issued in connection with Misc. case no.92 of 2015 pending before the Court of the Learned 19th Metropolitan Magistrate at Kolkata.

I have perused the petition of complaint as also the order dated 8.2.2017 passed by the Learned 19th Metropolitan Magistrate at Kolkata, I find that the process has been issued under Sections 323/325/326/379/506/120B/406 of the Indian Penal Code.

The genesis of the complaint case was that a prayer for police investigation was refused by the Learned ACMM-2 under Section 156(3) of the Code of Criminal Procedure and thereafter, it was directed to treat the said application as under Section 200 of the Code of Criminal Procedure. The manner of assault and the injuries are not appearing for a court of law to appreciate whether the same would be under Section 323 or Section 325 of the Indian

Penal Code. The magisterial order dated 8.2.2017 is silent on the issue as to what surfaced in the report under Section 202 of the Code of Criminal Procedure which compelled the learned Magistrate to issue process under those sections.

Having regard to the absence of such distinguishing feature in the petition of complaint and the examination under Section 200 of the Code of Criminal Code, I am of the opinion that the order dated 8.2.2017 must be revisited by the learned Magistrate. Learned Magistrate is directed to reconsider regarding the applicability of the Sections and pass a speaking order in respect of the offences under Sections 323/325/326 of the Indian Penal Code. Consequently, the order issuing process by the learned Magistrate and all subsequent orders are hereby set aside.

Accordingly, CRR 1894 of 2021 is partly allowed.

All pending connected applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

Learned advocate for the complainant is directed to communicate this order to the learned Metropolitan Magistrate, 12th Court, Kolkata. The learned Magistrate after considering the observations made by this Court would freshly apply his mind for the sections under which process should be issued. Such exercise must be completed within a period of two months from the date of communication of this order.

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

(Tirthankar Ghosh, J.)