

D/L 42
01.12.2022
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C.R.R.1877 of 2021
With
CRAN 5 of 2022

In Re: A petition under Section 482 of the Code of Criminal Procedure,
1973;

LGW Limited
Versus
The State of West Bengal and others

Mr. Ayan Bhattacharjee,
Mr. Pawan Kumar Gupta,
Mr. Sharequl Haque,
Mr. Somdev Ash.
...for the petitioner.

Mr. Sudipta Kumar Bose,
Mr. Subhankar Das.
...for the opposite party no.2.

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.
...for the State.

Mr. Bhattacharjee, learned advocate appearing for the petitioner submits that they have been implicated as accused no.2 in the petition of complaint. It is his submission that he is the owner of the land and has nothing to do with the purchaser who was entitled to a flat in the developers' allocation.

Learned advocate further submits that the allegations made in the petition of complaint prima facie failed to make out any offence to implicate the present petitioner and the same has been done with an ulterior motive for wrecking vengeance since the other

accused has failed to deliver the property to the complainant. Lastly, learned advocate argues that the address of the accused as shown in the cause title of the application was outside the jurisdiction of the learned Additional Chief Metropolitan Magistrate, Calcutta and, as such, it was incumbent upon the learned ACMM to first conduct an enquiry under Section 202 of the Code of Criminal Procedure and thereafter issue process against the accused persons.

Mr. Madhusudan Sur, learned advocate appearing for the State files a report which reflects that the complainant was served. Let the report be kept with the record.

Learned advocate appearing for the private opposite party no.2 rebuts the submissions advanced on behalf of the petitioner. It has been submitted that the opposite party no.2 even after making substantial payment has no scope to receive a flat. From the very inception, the accused persons had the intention of deceiving the complainant. Additionally, it has been submitted that the case is at the very nascent stage, an opportunity must be afforded to the complainant to adduce evidence before charge so that they are able to prima facie establish a case.

I have considered the submissions advanced on behalf of the learned advocate appearing for the petitioner/accused as well as the learned advocate appearing for the complainant/opposite party no.2. On an appreciation of the same, I find that so far as the documents which have been referred to by Mr. Bhattacharjee for appreciating his contention regarding the developers' allocation, the

same is not possible for this Court to entertain as it is related to question of facts. Having appreciated the issues raised by both the parties, I find there is an illegality in the order passed by the learned ACMM, Calcutta in issuing the process, as there was non-compliance of Section 202 of the Code of Criminal Procedure.

In view of the settled proposition of law by the Hon'ble Supreme Court in **National Bank of Oman vs. Barakara Abdul Aziz and another** reported in **(2013) 2 SCC 488**, I direct the learned ACMM, Calcutta to conduct an enquiry in the nature of Section 202 of the Code of Criminal Procedure which are by way of additional evidence afforded by the complainant or by an affidavit relating to the documents which are in custody of the complainant to be produced before the court for primary satisfaction of the learned Magistrate regarding implication of each of the accused persons.

Accordingly, the order dated 07.08.2021 issuing process under Sections 420/406/34 of the Indian Penal Code so far as the accused persons are concerned is hereby set aside. Learned Magistrate would complete the enquiry under Section 202 by 31st January, 2023 in the mode and manner as directed above and thereafter decide whether to issue process under Section 204 or drop the proceedings under Section 203 of the Code of Criminal Procedure.

Thus, CRR 1877 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

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 of all requisite formalities.

(Tirthankar Ghosh, J.)