

11.11.2022
Item No.19
BR

CRR 2588 of 2009

Harishchandra Maneklal Parekh & Ors.
Vs.
The State of West Bengal & anr.

Mr. Kushagra Shah ... for the Petitioner

Mr. Narayan Prasad Agarwal,
Mr. Pratick Bose ... for the State

This application under Section 482 of Criminal Procedure Code has been filed challenging the maintainability as well as legality of a criminal proceeding pending before learned 8th Court of Metropolitan Magistrate, Calcutta for complaint case no. C/35027/2008 under Sections 409/420 of Indian Penal Code.

Learned counsel for the petitioner was directed to serve notice upon the opposite party. Affidavit of service has been filed. The notice could not be served as the addressee could not be located. The matter is pending since 2009, therefore , I think it to expedient to dispose of the matter based on materials available on record.

Fact of the case in short is that Shri Pramod Kumar Bihani, Director, M/s. Laurel Wood Private Ltd. filed the petition of complaint before the learned Chief Metropolitan Magistrate at Calcutta on 25th November, 2008 and the petition of complaint was transferred to the learned Court of 8th Metropolitan Magistrate, for enquiry and disposal. Learned 8th Court of Metropolitan Magistrate on 26th November, 2009 examined the petition of

complaint and having examined the complainant under Section 200 of Cr P C was pleased to issue process against the accused persons having found a prima facie case under Section 409/420 of the Indian Penal Code . Challenging the very order passed by learned trial Court the accused persons preferred this application.

Mr. Kushagro Shah, learned counsel representing the petitioner makes me go through the cause title of the petition of complaint and submits that the accused no.2,3,4 ,5 and 6 all are residing beyond the territorial jurisdiction of the learned trial Court . Therefore, it was imperative on the part of learned trial Court to postpone the issue of process against the accused persons and either to enquire into the case himself or direct an investigation to be made by a police officer or by such other persons as it thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. However, without complying with the amended provision under Section 202 of Cr P C which came into force on and from 23rd June, 2006. Learned trial Court after examining the complainant issued process under Section 204 of the Cr P C . This infraction of the statutory mandate caused by learned trial Court strikes at the very root of the case resulting into abuse of process. According to Mr. Shah this is a fit case where Court should step in to undo wrong.

Having perused the provision of Section 202 of the Cr P C as amended in the year 2006 , I am of the view that learned trial Court failed to exercise the jurisdiction properly by ignoring the statutory mandate while dealing with the petition of complaint filed in the year 2008. Therefore, keeping in mind the legal principle *actus curiae neminum gravabit*- no one should suffer for the laches on the part of the Court, I am inclined to quash the

order impugned and send back the petition of complaint to the learned trial Court with the direction to proceed with the petition of complaint as per law .

Accordingly, this criminal revision is disposed of.

All parties are to act on the server copy of this order.

(Siddhartha Roy Chowdhury, J.)