

D/L25
April 8,
2022
Bpg.

C.R.R. No.2610 of 2017

In Re: An application under Section 482 read with Section 401 of the
Code of Criminal Procedure, 1973;

Dr. Amarnath Mukherjee
Versus
The State of West Bengal & Anr.

Mr. Sanjib Kumar Mukhopadhyay,
Ms. Nargish Parveen.
...for the petitioner.

Mr. Amal Kumar Ghosh,
Mr. Prabir Kumar Misra,
Mr. Shibendra Nath Chattopadhyay,
Mr. Priyam Misra.
...for the opposite party no.2.

The subject matter of the revisional application relates to
quashing of CR Case No.91 of 2017 presently pending before the
learned Judicial Magistrate, 2nd Court, Sadar at Cooch Behar.

I have perused the petition of complaint and the subject
matter therein refers to CR Case No.44 of 2013, which is the cause
of the complainant being defamed. In the petition of complaint, I do
not find any documents which referred to and placed before the
court when the learned Magistrate examined the complainant under
Section 200 of the Code of Criminal Procedure. There is a reference
in paragraph 11 in respect of certain documents, but the said
reference is for future purposes and not for the purpose of issuance
of process.

I have also considered the order dated 16.02.2017 which
refers to the examination of the complainant under Section 200 of
the Code of Criminal Procedure. There is no subjective satisfaction

recorded by the learned Magistrate as to whether the records relating to CR Case No.44 of 2013 were placed before the court, particularly the petition of complaint and/or the judgment which was cause of anxiety of the complainant. The same being not there, I am of the opinion that the learned Magistrate could not have expressed any subjective satisfaction for issuance of process in a case under Section 500 of the Indian Penal Code.

So far as the order dated 2.2.2017 regarding the learned CJM taking cognizance of the offence is concerned, the same is not interfered with, but, so far as order dated 16.02.2017 is concerned, I find that there are sufficient reasons for interference by this Court.

Thus, the order dated 16.02.2017 is set aside. Accordingly, I direct the learned Magistrate to freshly examine the complainant and its witnesses, assess the documents and thereafter decide whether the complaint case should proceed in accordance with Section 203 of the Code of Criminal Procedure or under Section 204 of the Code of Criminal Procedure.

Thus, CRR 2610 of 2017 is partly allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)