

08.04.2022

Item No.17
Ct.No.34
dc.

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

C.R.R. 3046 of 2019

**Shipra Banerjee & Ors.
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973 filed in connection with Complaint Case No. 552 of 2019 under Sections 323/354/447/34 of the Indian Penal Code pending before learned Judicial Magistrate, 2nd Court, Krishnagar, Nadia.

Mr. Dipanjan Dutt,
Mr. Soumya Subhra Ray,
Ms. Priti Kar

... For the Petitioners.

Affidavit-of-service filed in Court today be kept on record.

The present revisional application has been preferred challenging the proceedings being Complaint Case No. 552 of 2019 under Sections 323/354/447/34 of the Indian Penal Code pending before learned Judicial Magistrate, 2nd Court, Krishnagar, Nadia.

Mr. Dipanjan Dutt, learned advocate appearing for the petitioners has drawn the attention of this Court to the order dated 31.07.2019. The said order reflects that the learned Magistrate, after examining the complainant and another witness under Section 200 of the Code of Criminal Procedure, was pleased to issue process against the present petitioners.

It reflects from the cause title of the petition of complaint that the present petitioners are residents of Kolkata while the complainant invoked the jurisdiction of the court at Krishnagar, Nadia.

In view of the fact that the accused/present petitioners are staying outside the territorial jurisdiction of the court and in the light of 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 it was incumbent upon the learned Magistrate to adhere to the provisions of Section 202 of the Code of Criminal Procedure. Paragraphs 9 and 10 of the said judgement are relevant and as such, the same are set out as follows :

“9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”

“10. Section 202 CrPC was amended by the Code of Criminal Procedure (Amendment) Act, 2005 and the following words were inserted:

“and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,”
The notes on clauses for the abovementioned amendment read as follows:

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before

summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.”

The amendment has come into force w.e.f. 23-6-2006 vide Notification No. S.O. 923(E) dated 21-6-2006.”

Having regard to the settled principles of law, I set aside the order dated 31.07.2019 passed by the learned Judicial Magistrate, 2nd Court, Krishnagar, Nadia.

The learned Magistrate would adhere to the provisions of Section 202 of the Code of Criminal Procedure and thereafter, decide whether to proceed either in accordance with Section 203 of the Code of Criminal Procedure or Section 204 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 3046 of 2019 is partly allowed.

Interim order, if any, is hereby vacated.

All pending connected 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 with all requisite formalities.

(Tirthankar Ghosh, J.)