

21.04.2022

Sl. No. 40

Ct-34

BM

CRR 3096 of 2017

+

**IA No.: CRAN 4 of 2019
(Old No.: CRAN 2049 of 2019)**

In the matter of : Partha Paul & Anr.

... Petitioners

Mr. Sourav Chatterjee

Mrs. Subhasree Patel

Mr. Saikat Mondal

... for the petitioners

Mr. Sandip Ghosh

Mr. Apurba Kumar Datta

Mr. Bitasok Banerjee

... for the State

The records of the case reflects that the petition of complaint was filed on or about 5.7.2016 before the learned Additional Chief Judicial Magistrate, Kalna which was thereafter transmitted to the learned Judicial Magistrate, 2nd Court, Kalna. The learned Judicial Magistrate, Kalna on examination of the complaint under Section 200 of the Code of Criminal Procedure issued process under Sections 420/493/120B/34 of the Indian Penal Code. The manner in which the process has been issued is in gross derogation of the provision of Section 202 of the Code of Criminal Procedure. It has been settled by the Hon'ble Supreme Court in **Abhijit Pawar v. Hemant Madhukar Nimbalkar** reported in **(2017) 3 SCC 528** that prior to issuance of process in respect of accused residing outside the territorial jurisdiction of the learned Magistrate, the Magistrate should comply with the provision of Section 202 of the Code of Criminal Procedure and thereafter decide whether to proceed under Section 204 of the Code of Criminal Procedure or under

Section 203 of the Code of Criminal Procedure. The same having not been done in connection with the instant case, I am of the opinion that the order issuing process is bad in law and as such, the same is liable to be set aside. Thus, all orders passed in connection with complaint case No. C.R No.121 of 2016 corresponding to T.R No.217 of 2016 on 9.6.2016 and subsequently are set aside.

Learned Magistrate would comply with the provision of Section 202 of the Code of Criminal Procedure first and as directed above follow the subsequent proceeding in accordance with law.

Thus, CRR 3096 of 2017 is 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.)