

CRR 3799 of 2019
(Via video conference)

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

In the matter of : Sri Swarup Biswas & Ors.

.....Petitioners

Mr. Kishore Mukherjeefor the Petitioners

Ms. Puja Goswamifor the O.P. No. 2

The revisional application was preferred for challenging the proceeding of C. case no. 306 of 2019 pending before the Learned Judicial Magistrate, Kalyani under Sections 498A/313/120B/323/506 and 504 of the Indian Penal Code.

The learned advocate for the petitioners while arguing, has canvassed only the issue of Section 202 of the Code of Criminal Procedure. According to the learned advocate for the petitioners, the learned Magistrate without compliance of the provisions of Section 202 of the Code of Criminal Procedure has issued process against the petitioners although they are residing outside the territorial jurisdiction of the learned Magistrate.

I have perused the order-sheet which has been enclosed. The order-sheet reflects that on 20th June, 2019 the Learned Additional Chief Judicial Magistrate was pleased to register the complaint case and transfer the same to the learned Judicial Magistrate, Kalyani. On 21.6.2019, the learned Judicial Magistrate, Kalyani was pleased to record, receipt of the records

by transfer from the Learned Additional Chief Judicial Magistrate, Kalyani and fixed date on 22.8.2019 for S/A.

On 22.8.2019, the learned Magistrate was pleased to examine on oath on dock the complianant and record the statement under Section 200 of the Code of Criminal Procedure. After the initial statement on oath of complainant was recorded, the learned Magistrate was pleased to observe that on perusal of the petition of complaint along with all materials on record together with the statement under Section 200 of the Code of Criminal Procedure, a prima facie case for commission of offence punishable under Section 498A/313/506/34 of the Indian Penal Code was made out by the complainant and the said case must proceed towards trial. Accordingly, the learned Magistrate issued process against the accused persons fixing on 29.11.2019 as next date for S/R and appearance.

Records also reflect that on 6.11.2019, the present petitioners appeared/surrendered before the Learned Judicial Magistrate and they were granted bail. The main contention of the learned advocate for the petitioner is that on the same day, if the learned Magistrate has recorded the statement on oath of the complainant without any supporting witness there is no "postponement of issuance of process" under Section 202 of the Code of Criminal Procedure and the same itself amounts to non-compliance.

The very purpose of incorporating Section 202 of the Code of Criminal Procedure by the legislature was that persons residing at far of places are not unnecessarily implicated and harassed with ulterior motive. The present case is a case of

Section 498A of the Indian Penal Code along with other relevant sections of the Indian Penal Code. The relationships who have been implicated, are the husband and the parents-in-law of the complainant.

The petition of compliant reflects that there are allegations of torture and threat both at the matrimonial home and the parental home of the complainant. No points have been canvassed before this Court regarding the identity of the present petitioner and the existence of the relationship of the petitioners with the complainant. No issue has been raised as to how and in what manner, prejudice has been caused so far as the implication of the present petitioners are concerned.

The only point, which has been reiterated, is with regard to the non-compliance of the examination of other witnesses and no enquiry is being conducted by the learned Magistrate and a separate date being fixed for issuance of process. The word “enquiry” used in the Code of Criminal Procedure is not a magic term, there are acts/omissions which are involved within the parameters of enquiry in this case. The learned Magistrate has examined the complainant who has alleged of her sufferings. In a case of matrimonial dispute, prima facie, such oral statement coupled with the complaint is sufficient material to bring within the ambit of the term “enquiry” used in Code of Criminal Procedure for the learned Magistrate to be satisfied for the limited purpose of issuance of process.

The learned advocate for the petitioners has relied upon a judgment of a coordinate bench of this Court passed in the case of Samsul Haque Vs. The State and Anr. in CRR 2312 of 2016

wherein order of issuance of process was set aside and the case was remanded for fresh consideration.

There is no issue regarding the provision of Section 202 of the Code of Criminal Procedure existing in the statute book. However, the mode of application of Section 202 of the Code of Criminal Procedure would vary from case to case and the manner of its application in a particular set of facts and circumstances would be different.

Having regard to the manner in which the learned Magistrate proceeded, as is reflected from the order dated 22.8.2019, I am of the opinion that there is no illegality in the proceedings, particularly the manner in which the learned Magistrate arrived at its subjective satisfaction for issuance of process. As such no interference is called for.

Accordingly, CRR 3799 of 2019 is dismissed and all connected applications are disposed of.

Interim order, if any, is hereby vacated.

A submission has been advanced by the learned advocate for both the parties for expediting the progress of the trial.

Having regard to the submissions and as the Courts are operating at this stage in virtual mode, no particular time schedule can be directed. However, the learned Magistrate would take efforts for fixing at least one day in a month for this case and take the case to its logical conclusion within a reasonable period of time.

All parties are to act on the server copy of this order duly obtained from the official website of this Court.

(Tirthankar Ghosh, J.)