

24.11.2022
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SB
Ct. No.236

CRR 4525 of 2009
CRAN 1 of 2010

In the matter of : Smt. Sumitra Devi & Ors.

Mr. Sourav Chatterjee
Mr. Priyom Biswas ... for the petitioners

This revisional application assails the proceeding being C.R. Case No. 155 of 2006 pending before the learned Judicial Magistrate, 1st Court, Siliguri, Dajeeling under Sections 498A/506/34 of the Indian Penal Code including the order passed by the learned Trial Court on 11.01.2008 whereby the learned Court was pleased to issue process under Section 498A/506/34 of the Indian Penal Code.

Mr. Chatterjee, learned counsel representing the petitioners submits that the criminal case no. 155/2006 cannot be allowed to remain in force in as much as the learned Trial Court did not comply with the provision of Section 202 of Cr.P.C. While the petitioners are resident of Mallahpatti, Post Office- Thakurganj, District- Kishanganj, Bihar. It is further adverted that the complainant Smt. Namita Devi filed a petition of complaint on 21.12.2005 before the learned Chief Judicial Magistrate, Kishanganj against the petitioners being her husband, mother-in-law, brother-in-law. But the learned Chief Judicial Magistrate after examining the petition of complaint under Section 200 Cr.P.C. was pleased to dismiss the petition of complaint under Section 203 of Cr.P.C. and the said fact was not disclosed before the learned Chief Judicial Magistrate by the petitioners.

I have perused the petition of complaint copy of which is annexed to the petitioner for consideration, at page 39 the cause title of the said petition of complaint unairingly indicates the fact that the petitioners are residents of Kishanganj, Bihar.

Mr. Chatterjee, in order to buttress his argument on the point of non-compliance of Section 202 of Cr.P.C. relied upon the judgement of the Hon'ble Division Bench of this Court pronounced in the case of S.S. Binu vs. State of West Bengal & Another reported in 2018 Cr.L.J. 3769. It is held:-

“when an order of issuing summon is issued by a learned Magistrate against an accused who is residing at a place beyond the area in which he exercises his jurisdiction without conducting an enquiry under Section 202 Cr.P.C., the matter is required to be remitted to the learned Magistrate concerned for passing fresh orders uninfluenced by the prima facie conclusion reached by the Appellate Court.”

It is crystal clear from the impugned order that the learned Trial Court while issuing process failed to comply with the amended provision of Section 202 of Cr.P.C. Therefore, in view of amnded provision of Section 202 of Cr.P.C. and in consonance with the judgement of the Hon'ble Division Bench of this Court, I am inclined to set aside the order dated 11.01.2008. Learned Judicial Magistrate, 1st Court, Siliguri is directed to revisit the provision of Section 200 of Cr.P.C. in the light of Section 202 Cr.P.C. and pass necessary orders.

With the aforesaid observation, the criminal revision along with all applications are disposed of.

Interim order, if any, stands vacated.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

The parties shall act upon the server copy 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 completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)