

Court No. 33
Item 7
sk
30.8.2022

CRR 3169 of 2013

Preetu Pathak-vs-State of West Bengal & Ors.

An application under Section 482 of the Code of Criminal Procedure.

None appears on behalf of the petitioner.

The petitioner has preferred the present revisional application for quashing of proceeding being Complaint Case No. 13 of 2013 pending before the learned Additional Chief Judicial Magistrate, Bolpur, Birbhum.

The brief fact of the case is that the opposite party no. 2/complaint filed a complaint before the learned Additional Chief Judicial Magistrate Bolpur, Birbhum under Section 138 of the Negotiable Instruments Act and considering the materials, the learned Magistrate issued process against the petitioner.

Being aggrieved by and dissatisfied with the said proceeding, the petitioners have preferred the present revisional application.

The proceeding before the learned Judicial Magistrate has been challenged by the petitioner precisely on the ground that provisions of Section 202 of the Code of Criminal Procedure has not been adopted by the learned Magistrate while issuing process against the petitioner under Section 138 of the Negotiable Instruments Act though the petitioner is a resident outside the territorial jurisdiction of the learned Magistrate.

A Division Bench of the this court in **S.S.Binu versus**

State of West Bengal and another and other batch of petitions reported in **2018 Cri LJ 3769**, in answer to reference observed as follows in paragraph no. 110:-

110. *"To sum up, the reference made by the learned Single Bench on the five issues are answered as follows:-.*

- i) According to the settled principles of law, the amendment of subsection(1) of Section 202 Cr.P.C. by virtue of Section 19 of the Criminal Procedure (Amendment) Act, 2005, is aimed to prevent innocent persons, who are residing outside the territorial jurisdiction of the learned Magistrate concerned, from harassment by unscrupulous persons from false complaints. The use of expression "shall", looking to the intention of the legislature to the context, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.*
- ii) Keeping in mind the object sought to be achieved by way of amendment of sub-section (1) of Section 202 Cr.P.C., the nature of enquiry as indicated in Section 19 of the Criminal Procedure (Amendment) Act, 2005, the Magistrate concerned is to ward off false complaints against such persons who reside at far off places with a view to save them from unnecessary harassment and the learned Magistrate concerned is under obligation to find out if there is any matter which calls for investigation by Criminal Court in the light of the settled principles of law holding an enquiry by way of examining the witnesses produced by the complainant or direct an investigation made by a police officer as discussed hereinabove.*
- iii) 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.*
- iv) Keeping in mind the object underlined in Section 465 Cr.P.C. that if on any technical ground any party to the criminal proceedings is aggrieved he must raise the objection thereof at the earliest stage. In the event of failure on the part of an aggrieved party to raise objection at the earliest stage, he cannot be heard on that aspect after the whole trial is over or even at a later stage after his participation in the*

- trial.*
- v) *In cases falling under Section 138 read with Section 141 of the N.I. Act, the Magistrate is not mandatorily required to comply with the provisions of Section 202 (1) before the issuing summons to an accused residing outside the territorial jurisdiction of the learned Magistrate concerned”.*

Thus, the Hon’ble Court in the reference has categorically observed that in cases falling under Section 138 read with Section 141 of the Negotiable Instruments Act, the Magistrate is not mandatorily required to comply provisions of Section 202 before issuing process to an accused outside the territorial jurisdiction of the learned Magistrate concerned. Thus the ground of non-compliance of provisions of Section 202 of Cr.P.C. by the learned Magistrate does not hold good in the facts and circumstances of the present case as it relates to offence under Section 138 of the Negotiable Instruments Act. By an order dated 24.1.2013, the learned Magistrate on the basis of available materials found existence of sufficient ground to proceed against the petitioner under Section 138 of the Negotiable Instruments Act. Accordingly, there is no infirmity in the impugned order and as such does not call for interference.

The instant criminal revisional application is, thus, dismissed.

All connected applications stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all

necessary legal formalities.

(Bivas Pattanayak, J.)