

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

**11.7.2022
S.D.
10.**

C.R.R. 2 of 2022

Pinaki Dutta @ Datta & Ors.

Vs.

The State of West Bengal & Anr.

Mr. Sunil Kumar Sarkar

Ms. Smita Sinha (Mitra)

....For the Petitioners.

Mr. Aditi Shankar Chakraborty, Ld., A P.P.

Mr. Abhijit Sarkar

...For the State.

Mr. Subhasish Misra

Mr. Swarup Das

...For O.P. No. 2.

Party/parties is/are represented in the order of their name/names as appearing in the cause title.

The petitioners are accused persons in C.R. Case No. 465 of 2018 pending before learned Judicial Magistrate, 3rd Court, Sadar Cooch Behar. The petitioners have filed this application under Section 401 read with Section 482 of the Cr.P.C. assailing Order No. 5 dated 12.3.2019 passed by learned Judicial Magistrate, 3rd Court, Sadar-Cooch Behar in C.R. Case No. 465 of 2018 whereby learned Magistrate took cognizance of the offence under Section 406 of the IPC against the accused petitioners and issued process under Section 204 of the Cr.P.C. fixing 28.5.2019 for service report and appearance.

Learned advocates for the petitioners contended that petitioner no. 1 entered into second marriage with respondent no. 2 on 11.8.2013 after

dissolution of his first marriage and the marriage was solemnized in the house of the father of respondent no. 2 at New Town, Cooch Behar. The respondent no. 2 within a short period lodged a complaint against the petitioners before the Judicial Magistrate, 3rd Court, Cooch Behar. The petitioner no. 1 resides at Mal Bazar which is outside the jurisdiction of the Court but without complying the provision under Section 202(1) of the Cr.P.C., the learned Magistrate has issued process against the petitioners under Section 204 of the Cr.P.C. It is contended that the impugned order is bad in law and is liable to be set aside.

Learned advocates for opposite party no. 2 vehemently opposed the prayer made by the petitioners and submitted that learned Magistrate had made necessary enquiry and had issued a search warrant directing the Officer-in-Charge, Mal Bazar Police Station for execution. It is urged that the impugned order suffers from no illegality and the present revisional application is liable to be dismissed.

Perused the impugned order, copy of the complaint in C.R. Case No. 465 of 2018 and the application under Section 401/482 of the Cr.P.C. It appears from the order under challenge that learned Magistrate after examining the witnesses under Section 200 of the Cr.P.C. was prima facie satisfied that an offence under Section 406 of the IPC has been committed by the accused persons and issued summons to the petitioners under Section 204 of the Cr.P.C.

Section 202(1) of the Cr.P.C. lays down as follows:

“202.Postponement of issue of process.-(1) Any magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

- (a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or
- (b) Where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

The mandatory requirement in a case where the accused persons reside beyond the local limits of the Court is to postpone issuance a process and enquire the case himself or direct for an investigation to be made by police officer or by such other person as he think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. In the instant case, petitioner nos. 1 and 2 have their address at Mal Bazar and petitioner nos. 3 and 4 have their address at Siliguri. Therefore, it is essential that before taking cognizance or issuing a process against the petitioners, learned Magistrate ought to have enquired the matter under Section 202(1) of the Cr.P.C. In the instant case, it is explicit from the order that no such enquiry had been conducted.

Being fortified by the decision in the case of *Govind Prasad Kejriwal vs. State of Bihar and Anr. reported in (2020) 16 SCC 714* and

S.S. Binu vs. State of West Bengal and 30 other matters reported in 2018 SCC online Cal 1741 and 2018 CRI.N. 3769 of this High Court and in the case of *Divyajot Singh Jendu vs. Manikaran Analytics Ltd. (Represented by Subrata Roy, Legal-In-Charge)* in *C.R.R. 783 of 2017*, I hold that in the case under consideration, the learned Magistrate did not hold any enquiry contemplated under Section 202 of the Cr.P.C. though it is apparent from the petition of complaint that the accused petitioners reside outside the jurisdiction of the Court where the complaint has been lodged.

Therefore, the impugned order is bad in law and the same stands set aside. All orders passed subsequent to order dated 12.3.2019 stands set aside.

Interim order, if any, stands vacated.

The revisional application is allowed.

Let a copy of this order be communicated to learned Judicial Magistrate, 3rd Court, Cooch Behar for information. Learned Magistrate shall take appropriate action for holding enquiry under Section 202(1) of the Cr.P.C.

(Ananda Kumar Mukherjee, J.)

