

D/L11
17.01.2023
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C.R.R.129 of 2021

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

Srikanta Paul
Versus
Manik Sarkar and others

Mr. Dhananjay Banerjee,
Ms. Oindrila Ghosh.
...for the petitioner.

Affidavit-of-service so filed by the petitioner be kept with
the record.

The petitioner happens to be the complainant. The grievance of the petitioner is that the learned Magistrate was pleased to issue process under Section 204 of the Code of Criminal Procedure, but, subsequently the learned Magistrate recalled the order and directed for enquiry under Section 202 of the Code of Criminal Procedure. The purpose and object of issuance of summons under Section 204 of the Code of Criminal Procedure in respect of persons staying outside the jurisdiction of the court has been settled by the Hon'ble Supreme Court in a series of case. The very purpose is to check as to whether there is any possibility of false implication of the accused persons in a criminal case. Section 202 of the Code of Criminal Procedure is discretion of the court which is intended for a subjective satisfaction to be recorded prior

to issuance of process.

In this case, in the petition of complaint and in the cause title an address was provided which was within the jurisdiction of the concerned court. Thereafter, the court observed that the address is vague and the residential address was furnished by the complainant in respect of the accused persons against whom process was issued. The learned Magistrate by a subsequent order directed for enquiry under Section 202 of the Code of Criminal Procedure as the residential address was outside the territorial jurisdiction of the court. Such order was passed in the month of October 2020. I do not find that direction for passing order under Section 202 of the Code of Criminal Procedure is to be interfered with. However, learned Magistrate should have been cautious prior to issuance of process as recalling of an order of issuance of process is not within the domain of the learned Magistrate.

Having considered that more than two years have passed since the order under challenge is before this Court and without interim order of stay, I direct that learned Magistrate on receipt of the report to immediately take steps for exercising his discretion on the point of issuance of process, if the same has not already been done.

With the aforesaid observations, CRR 129 of 2021 is disposed of.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order 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 compliance of all requisite formalities.

(Tirthankar Ghosh, J.)