

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 239 of 2023

**Prabir Ghosh
Vs.
State of West Bengal & Anr.**

**For the petitioner : Mr. Ayan Bhattacharjee,
Mr. S. Ash,
Mr. Suman Majumder.**

Judgement on : 03.04.2023.

Bibek Chaudhuri, J.

The complainant company paid loan of Rs.25,00,000/- on 18th March, 2016 in favour of accused no. 1/company of which other accused persons are directives/executives and intricately involved in the business of the said company. The loan taken on 18th March, 2016 was not paid in favour of the complainant/company. It is contended on behalf of the petitioner that an out and out commercial transaction and in the instant case a time barred claim has been given a criminal colour to lodge a complaint against the petitioner.

It is not in dispute that loan was taken on 18th March, 2016. In order to show even *prima facie* that the petitioner had no criminal intention of deception, the learned Advocate for the petitioner refers to payment of a sum of Rs.1,10,034/- in favour of the complainant

company. Payment of such meager amount to by-pass criminal liability cannot be a ground for admitting the instant revision. With a *prima facie* finding that the petitioner is not liable under Sections 420/406 of the Indian Penal Code. However, it is contended by the learned Advocate for the petitioner that the petitioner carries on business in the name of accused no. 1/company at A.J.C.Bose Road within P.S.-Bhawanipur which is outside the jurisdiction of the learned Metropolitan Magistrate, 13th Court, Calcutta. It is submitted by the learned Advocate for the petitioner that the learned Magistrate issued process against the accused persons without complying with the provision under Section 202 of the Code of Criminal Procedure which he is obliged to comply, the impugned order dated 27th January, 2021 is set aside.

The learned Magistrate can enquire into the matter under Section 202 of the Code of Criminal Procedure himself by examining other witnesses on behalf of the complainant or directing the Police authority to enquire and report. In the instant case, it is recorded by the learned Magistrate that he held enquiry into the matter under Section 202 of the Code of Criminal Procedure on perusal of the original documents on record. It is not compliance under Section 202 of the Code of Criminal Procedure.

In view of such circumstances, the order dated 27th January, 2021 is set aside.

The learned Magistrate is directed to enquire into the matter strictly according to the provision contained in Section 202 of the Code of Criminal Procedure and thereafter if he finds sufficient material he is at liberty to issue fresh process against the accused.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 09.