

03.05.2023
Court-42
Item No.-12

CRR 320 of 2023

**Lakshman Kundu & Ors.
Vs.
The State of West Bengal & Anr.**

For the petitioners: -

Mr. Swapan Mallik, Adv.,
Mr. Arup Kundu, Adv.,
Ms. Sudeshna Dan, Adv.

For the Opposite Party:-

Mr. Sauradeep Dutta, Adv.,
Mr. Swakshar Kumar Mondal, Adv.

The petitioners have challenged legality, validity and propriety of an order dated 10th November, 2022 passed by the learned Additional Chief Judicial Magistrate, Bishnupur in connection with 76C/2022 by taking cognizance of offence under Section 302/201 of the IPC pending before the learned Additional Chief Judicial Magistrate, Bishnupur.

The opposite party No.2 filed an application under Section 156(3) of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate at Bishnupur. The learned Additional Chief Judicial Magistrate, Bishnupur transmitted the said application to the jurisdictional Police Station directing the Officer-in-Charge of the said police station to register a case treating the same as FIR and to investigate into the case. On the basis of the said order Patrasayer P.S Case No.22 of 2018 dated 12th March, 2018 under Section 304A/34 of the IPC was registered. However after investigation police submitted final report on mistake of fact (FRMF) 22nd May, 2018. Being dissatisfied with the said FRMF, the complainant filed a revision before this Court which was registered as CRR No.2446 of 2019. The said criminal

revision was disposed of by a Coordinate Bench vide order dated 30th March, 2022 setting aside the order dated 9th April, 2019 passed by the learned Additional Chief Judicial Magistrate at Bishnupur. The learned Magistrate was directed to grant leave to the defacto complainant to treat the application under Section 156(3) of the Cr.P.C as complaint under Section 200 of the Cr.P.C. The learned Magistrate, thereafter, would record the statement of the defacto complainant and the witnesses and if required thereafter he would decide the course of action to be followed including passing of further orders under Section 156(3) of the Cr.P.C. Accordingly the defacto complainant and the witnesses were examined on S.A and considering the available evidence the learned Magistrate found sufficient ground to proceed further against the accused persons for committing offence under Section 302/201 of the IPC. Subsequently, he issued warrant of arrest against the accused persons.

It is submitted by the learned Advocate for the petitioners that as soon as the learned Magistrate on due consideration of evidence of the complainant and witnesses found that the case is a sessions trial case he is functus officio to take cognizance of offence and issue warrant of arrest against the accused. Therefore, the impugned order is bad in law and accordingly liable to be set aside.

The learned Advocate for the opposite party has objected to such permission made by the learned Advocate for the petitioners.

Having heard the learned Advocate for the petitioners this Court likes to record that the petition filed by the complainant was taken as a complaint under Section 190(1)(a) of the Code of Criminal Procedure in view of the judgment passed in CRR No.2446 of 2019. After examination of complainant and the witnesses the learned Magistrate found that there is sufficient material against

the accused persons/petitioners for further proceeding under Section 302/201 of the IPC. Therefore, he issued process against the accused persons in the form of warrant of arrest under Section 204 of the Cr.P.C. If a complaint is filed disclosing session triable case and the learned Magistrate take cognizance of offence after examination of the complainant and the witnesses to the effect that there are sufficient ground for proceeding further against the accused persons for committing session triable offence it is the duty of the learned Magistrate to compel appearance of the accused persons before this Court first prior to commitment of the case. Section 208 of the Cr.P.C is absolutely clear on the issue that where, in a case instituted otherwise than a police report, it appears to the Magistrate issuing process under Section 204 that the offence is triable exclusively by the court of session, the Magistrate shall without delay furnish to the accused through all costs copies of – (i) the statement recorded under Section 200 or 202 of all persons examined by the Magistrate (ii) the statement and confession if any recorded under Section 161 or 164 (iii) any document produced before the Magistrate on which prosecution proposes to rely. Thus, it is the duty of the learned Magistrate to compel attendance of the accused persons. Accordingly he issued warrant of arrest against the accused persons.

I do not find any illegality in the impugned order and accordingly the instant revision is dismissed on contest, however, without cost.

(Bibek Chaudhuri, J.)