

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 295 of 2019

With

IA No. : CRAN 1 of 2019

(Old No. : CRAN 1538 of 2019)

Madan Mohan Mondal & Ors.

Vs

Smt. Kakali Paul (Mondal)

For the Petitioners : Mr. Milon Mukherjee, Sr. Adv.
Mr. Rahul Ganguly.

For the Opposite Party : None.

Heard on : 20.12.2022

Judgment on : 13.01.2023

Shampa Dutt (Paul), J.:

The Revision has been preferred praying for quashing of the proceedings of C.R. Case No. 197 of 2018, pending before the Court of the Learned Judicial Magistrate, 2nd Court, Paschim Midnapore under Sections 498A/323/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

The petitioner no. 1 is the husband of the complainant/opposite party and the other petitioners are his relatives.

The allegations by the Complainant in the petition of complaint was to the effect that after her marriage the petitioners took away and sold all her gold ornaments and swindled the sale proceeds. There was regular demand of dowry and when her father refused to pay any further dowry, the opposite party managed to escape from her matrimonial home when they tried to kill her.

The Learned Chief Judicial Magistrate, Paschim Midnapore upon receipt of the aforesaid petition of compliant, was pleased by his order dated 19.04.2018 to take cognizance of the offences and transferred the case to the Learned Judicial Magistrate, 2nd Court, Paschim Midnapore for trial and disposal.

On 23.07.2018 the Learned Judicial Magistrate, 2nd Court, Paschim Midnapore upon examination of the complainant/opposite

party on solemn affirmation, was pleased by his order to find out a prima facie case made out against the petitioners under Sections 498A/323/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act and issued summons against them and was further pleased to fix 11.10.2018 for service return and appearance.

The allegations in the said petition of complaint are to the effect that the petitioner no. 1 was married to the complainant/opposite party on 24.11.2014 as per Hindu rites and customs. At the time of marriage as per the demand of the accused persons, the father of the opposite party gave Rs. 2.5 lakhs in cash out of the demanded sum of Rs. 3 lakhs, 10 bhoris of gold ornaments and other articles. That after marriage the opposite party started residing at her husband's house and the petitioners took away all her gold ornaments and sold the same and swindled the sale proceeds.

After few days of the marriage, the petitioners demanded the balance sum of Rs. 50,000/- from the father of the opposite party but as he failed to meet such demand, the petitioner was assaulted by the accused persons and was not even given proper food and medical treatment when she fell ill. The opposite party bore all such torture in silence.

That subsequently the opposite party became pregnant but inspite of that, the petitioners inflicted mental and physical torture upon her over the issue of the balance sum of Rs. 50,000/-.

On 21.01.2016 the opposite party gave birth to a female child as a result of which the petitioners stopped talking to the opposite party and demanded a further sum of Rs. 3 lakhs from her father as expenses towards the marriage of the daughter of the opposite party. On coming to know about such demand from his daughter, the father of the opposite party handed over a sum of Rs. 1 lakh to the petitioner no. 1 and requested the accused persons not to torture his daughter i.e. the opposite party and torture upon the opposite party was stopped for sometime. However, the petitioners demanded a further sum of Rs. 2 lakhs after a few months, but when the father of the opposite party expressed his inability to pay any further sum of money, the petitioners abused her in filthy languages and even assaulted her. On 26.01.2018 at about 5-00 a.m. when the petitioners with a view to kill the opposite party went to bring kerosene, the opposite party somehow managed to escape from her matrimonial home along with her female child and took shelter at her paternal home. Since then the petitioners did not take any information about the welfare of the opposite party.

Mr. Milon Mukherjee, Learned Senior Counsel appeared for the petitioner has submitted that the impugned proceeding is a gross

abuse of the process of law which if allowed to continue will degenerate itself into a weapon of harassment and persecution and as such the same is liable to be quashed forthwith for the ends of justice.

The impugned proceeding is vexatious, malafide and has been initiated with an oblique motive to harass and humiliate the petitioners. In such backdrop, continuance of such proceeding, so far as it relates to the petitioners, is liable to be quashed.

Taking cognizance of the offence by the Learned Magistrate on the basis of the said petition of complaint and further proceedings therein has no basis whatsoever.

The petitioners are permanent residents of Jharkhand and the complaint was lodged at Paschim Midnapore, although the alleged acts constituting offences under Sections 498A/323/34 of the Indian Penal Code occurred in Jharkhand, the place of enquiry should be at Jharkhand and the Learned Magistrate erred in law by taking cognizance of the offences **without compliance of Section 202 of the Cr.P.C.**

Mr. Mukherjee has further submitted that the Code of Criminal Procedure was amended in the year 2005 wherein Section 202 of the Code was amended by adding of the words.

“And shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction”. The main purpose or object behind this amendment was to stop false complaints against such persons residing at far off places in order to save them from unnecessary harassment.

Thus in the present case, the petitioners are residing at Jharkhand which is beyond the area where the Magistrate is exercising his jurisdiction, it is mandatory on the part of the Magistrate to conduct an inquiry or investigation before issuing process and as the same was not done in the present case, the order of taking cognizance is bad in law and liable to be set aside and the proceeding impugned is also liable to be quashed.

That the requirement of conducting inquiry or directing an investigation before issuing process is not an empty formality and witnesses are needed to be examined, whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examination of witnesses if any, and **this exercise by the Magistrate for the purpose of examining whether or not there is sufficient ground of proceeding against the accused is not an empty formality but is an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint when considered along with the statements recorded or**

the inquiry conducted thereon would prima facie constitute the offence for which the complaint is filed. In the instant case the Magistrate erred in law by not complying with the mandatory provisions envisaged under Section 202 of the Code.

The allegation made in the petition of complaint, do not prima facie constitute any offence or make out a case against the petitioner and as such the initiation and continuation of the instant proceeding is liable to be quashed for the ends of justice.

The impugned proceeding is otherwise bad in law and as such the same is liable to be quashed.

There is no representation on behalf of the opposite party inspite of due service.

Mr. Mukherjee has brought the notice of the court to the ruling cited in **2018(3) AICLR 625(Cal.), S.S. Binu vs. State of West Bengal (Cal.), para 100** which is reproduced here:-

“100. To sum up, the reference made by the Learned Single Judge on the five issues are answered as follows:-

I. According to the settled principles of law, the amendment of sub-section (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 issuing summons to an accused residing outside the territorial jurisdiction of the learned Magistrate concerned."

Section 202 Cr.P.C. lays down:-

“202. Postponement of issue of process. -

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised 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 Session; 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.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by

this Code on an officer- in- charge of a police station except the power to arrest without warrant.”

This court also relies upon the case of **Birla Corporation Ltd. vs. Adventz Investments and Holdings (Criminal appeal No. 875, 876, 877 of 2019)** The Supreme Court on 9th May, 2019 observed and held in respect of Section 202 Cr.P.C. as follows (The relevant paragraph are reproduced herein):-

26. *Complaint filed under Section 200 Cr.P.C. and enquiry contemplated under Section 202 Cr.P.C. and issuance of process:- Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 Cr.P.C. The purpose of the enquiry under Section 202 Cr.P.C. is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused.*

27. *The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 Cr.P.C. or whether the complaint should be dismissed by resorting to Section 203 Cr.P.C. on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry*

under Section 202 Cr.P.C., the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.

28. *In National Bank of Oman v. Barakara Abdul Aziz and Another (2013) 2 SCC 488, the Supreme Court explained the scope of enquiry and held as under:-*

“9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”

29. *In Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others (2015) 12 SCC 420, the scope of enquiry under Section 202 Cr.P.C. and the satisfaction of the Magistrate for issuance of process has been considered and held as under:-*

“2. Chapter XV Cr.P.C. deals with the further procedure for dealing with “Complaints to Magistrate”. Under Section 200 Cr.P.C, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person “for the purpose of deciding whether or not there is sufficient ground for proceeding”. If, after considering the statements recorded under Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.

3. Chapter XVI Cr.P.C deals with “Commencement of Proceedings before Magistrate”. If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) Cr.P.C for attendance of the accused.”

30. *Reiterating the mandatory requirement of application of mind in the process of taking cognizance, in Bhushan Kumar and Another v. State (NCT of Delhi) and Another (2012) 5 SCC 424, it was held as under:-*

“11. In Chief Enforcement Officer v. Videocon International Ltd.

(2008) 2 SCC 492 (SCC p. 499, para 19) the expression “cognizance” was explained by this Court as “it merely means ‘become aware of’ and

when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code."

31. Under the amended sub-section (1) to Section 202 Cr.P.C., it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.

32. *By Cr.P.C. (Amendment) Act, 2005, in Section 202 Cr.P.C. of the Principal Act with effect from 23.06.2006, in sub-section (1), the words "...and shall, in a case where accused is residing at a place beyond the area in which he exercises jurisdiction..." were inserted by Section 19 of the Criminal Procedure Code (Amendment) Act, 2005. In the opinion of the legislature, such amendment was necessary as false complaints are filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that persons residing at far off places are not harassed by filing false complaints making it*

obligatory for the Magistrate to enquire. Notes on Clause 19 reads as under:-

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that the innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.”

33. *Considering the scope of amendment to Section 202 Cr.P.C., in Vijay Dhanuka and Others v. Najima Mamtaaj and Others (2014) 14 SCC 638, it was held as under:-*

“12.The use of the expression “shall” prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word “shall” is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word “shall” in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression “shall” and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.” Since the amendment is aimed to prevent persons residing outside the jurisdiction of

the court from being harassed, it was reiterated that holding of enquiry is mandatory. The purpose or objective behind the amendment was also considered by this Court in Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another (2017) 3 SCC 528 and National Bank of Oman v.

Barakara Abdul Aziz and Another (2013) 2 SCC 488.

34. *The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman, this Court held as under:- “22.the Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal*

court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

35. *In Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others (1998) 5 SCC 749, the Supreme Court has held that summoning of an accused in a criminal case is a serious matter and that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and law governing the issue. In para (28), it was held as under:-*

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused." The principle that summoning an accused in a criminal case is a serious matter and that as a matter of course, the criminal case against a person cannot be set into motion was reiterated in GHCL

Employees Stock Option Trust v. India Infoline Limited (2013) 4 SCC 505.

36. *To be summoned/to appear before the Criminal Court as an accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused. In Punjab National Bank and Others v. Surendra Prasad Sinha 1993 Supp (1) SCC 499, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment.*

37. *At the stage of issuance of process to the accused, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be prima facie satisfied that there are sufficient grounds for proceeding against the accused. In Jagdish Ram v. State of Rajasthan and Another (2004) 4 SCC 432, it was held as under:-*

"10.The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."

56. *As held in Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose and Another AIR 1963 SC 1430 and in a series of judgments of the Supreme Court, the object of an enquiry*

under Section 202 Cr.P.C. is for the Magistrate to scrutinize the material produced by the complainant to satisfy himself that the complaint is not frivolous and that there is evidence/material which forms sufficient ground for the Magistrate to proceed to issue process under Section 204 Cr.P.C. It is the duty of the Magistrate to elicit every fact that would establish the bona fides of the complaint and the complainant.

60......*The Magistrate who is conducting an investigation under Section 202 Cr.P.C. has full power in collecting the evidence and examining the matter. We are conscious that once the Magistrate is exercised his discretion, it is not for the Sessions Court or the High Court to substitute its own discretion for that of the Magistrate to examine the case on merits. The Magistrate may not embark upon detailed enquiry or discussion of the merits/demerits of the case. But the Magistrate is required to consider whether a prima case has been made out or not and apply the mind to the materials before satisfying himself that there are sufficient grounds for proceeding against the accused.*.....

61. *The object of investigation under Section 202 Cr.P.C. is “for the purpose of deciding whether or not there is sufficient ground for proceeding”. The enquiry under Section 202 Cr.P.C. is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against or whether it is a baseless one on which no action need be taken. The law imposes a serious responsibility on the Magistrate to decide if there is sufficient ground for proceeding against the accused. The issuance of process should not be mechanical nor should be*

made as an instrument of harassment to the accused. As discussed earlier, issuance of process to the accused calling upon them to appear in the criminal case is a serious matter and lack of material particulars and non-application of mind as to the materials cannot be brushed aside on the ground that it is only a procedural irregularity.....”

Thus it is clear that Section 202 Cr.P.C. makes it obligatory upon the Magistrate that before summoning the **accused residing beyond** his jurisdiction he shall inquire into the case himself or direct investigation to be made by a Police Officer or by such other person as he thinks fit, for finding out whether or not there is sufficient ground for proceeding against the accused.

The orders relevant in the present revision dated 19.04.2018 of the Chief Judicial Magistrate, Paschim Midnapore and order dated 23.07.2018 of the Judicial Magistrate, 2nd Court, Paschim Midnapore and are reproduced here:

Order dated 19.04.2018

“This is a complaint u/s- 498A/323/34 I.P.C. Act filed this day by the above named complainant before this Court.

Cognizance is taken.

Let, the case record be treat as complaint case.

Transfer the case record to the Ld. JM 2nd Court, Paschim Medinipur for disposal.”

Order dated 23.07.2018

“Record is fixed today.

The complt is present examined on S.A.

Opn. such examination, this court finds sufficient grounds for proceeding U/s- 498A/323/34 IPC and Sec. 3/4 D.P. Act.

Issue process U/s- 204 Cr.P.C.”

It is clear from the said orders that no inquiry as obligatory under Section 202 Cr.P.C. has been conducted.

The Magistrate did not comply with the provision of Section 202 Cr.P.C., even though the petitioners reside outside the jurisdiction of the court, (the only address being in the State of Jharkhand).

In the present case the Magistrate did not Conduct any inquiry into the case himself or direct an investigation as required under Section 202 Cr.P.C. before directing the issue of process and as such the order is not in accordance with law, and is thus an abuse of the process of law.

The proceedings in this case (CR 197/18) is for offences punishable under Sections 498A/323/34 IPC read with Section 3 /4 of the Dowry Prohibition Act. **The nature of allegations** in the petition of complaint also needs an inquiry under Section 202 Cr.P.C.

Thus considering the facts and circumstances of the present case, the nature of case pending between the parties, the non-compliance of Section 202 Cr.P.C. by the Magistrate before issuance of process is prima facie an abuse of process of Court.

Accordingly in the interest of justice the order dated **23.07.2018** in CR 197/18 pending before the Court of Judicial Magistrate, 2nd Court, Purba Midnapore, is hereby set aside/quashed.

The matter is remitted to the learned Magistrate for considering the matter afresh as per the relevant provision of law, under Section 202 Cr.P.C. and as per the guidelines of the Supreme Court in the judgment [**Birla Corporation Ltd. vs. Adventz Investments and Holdings (Supra)**] referred in this order/judgment without being influenced by the order of this Court and also being guided by the judgment in **S.S. Binu vs. State of West Bengal (Supra)**.

CRR 295 of 2019 along with CRAN 1/2019 are disposed of.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)