

54 16.08.
2023
Ct
237
rup

CRR 539 of 2018
IA NO: CRAN 9 of 2023

Subhojit Majumdar & Ors.
Vs.
Dr. Indranil Basu Ray

Mr. Kaushik Chatterjee,
Mr. Tirthankar Dey ... for the petitioners

Affidavit of service filed by the petitioner be taken
on record.

Heard learned advocate appearing on behalf of the
petitioners.

This revisional application has been filed for
quashing of the entire proceeding in connection with
Complaint Case No. CS-69831/2017, but ultimately
assailed the order dated 06.01.2018 whereby learned
Metropolitan Magistrate, 16th Court, Calcutta issue
process against the petitioners for the alleged offence
under Section 420/409/120B of the Indian Penal Code.

Mr. Kaushik Chatterjee, learned advocate appearing
on behalf of the petitioners has submitted that learned
Metropolitan Magistrate did not comply with the
provision of Section 202 of the Code of Criminal
Procedure instead issue process against the petitioners.

In support of his contention, Mr. Chatterjee relied
on a decision in the case of **S.S. Banu vs. State of West**

Bengal & Anr. along with others revisional applications reported in **2018 Cri. LJ 3769** wherein Hon'ble Division Bench of this Court observed as follows:-

110. "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 subsection (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 subsection (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."

From the record, it appears that the complaint was filed before the Chief Metropolitan Magistrate, Calcutta which was registered as Complaint Case No. CS-69831 of

2017 under Section 420/409/120B of the Indian Penal Code, alleging, inter alia, that the complainant being a NRI approached Axis Bank, A.J.C. Bose Road, 4th Floor at A.C. Market, Shakespeare Sarani, P.S. Kolkata for home loan and bank authority received payment with regard to the process fee and also payment was made for one insurance policy. But, ultimately loan was not disbursed in spite of sanction on the plea of submission of certified copy of the deed in respect of property mortgaged to the bank.

On receipt of the complaint, learned Chief Metropolitan Magistrate transferred the same to the Court of learned Metropolitan Magistrate, 16th Court, Calcutta for enquiry and disposal. Learned Magistrate examined Arunangshu Basu Ray on behalf of the complainant on oath and issued process.

For the issuance of process, it is sine qua non to pass an order postponing the issue of process against the accused, who is resident of the area beyond the jurisdiction of the Court. Admittedly, petitioners are not resident of Calcutta and therefore, learned Magistrate ought to have postponed the issue of process and pass an order directing an investigation made by the police officer or by enquiring into the case by himself or by any other person as it thinks fit for the purpose of deciding where or not there is sufficient ground for issuing process. Learned Magistrate can take evidence of witnesses on

oath, at the time of enquiry, provided if it appears to the Magistrate that offence complained of exclusively triable by the court of sessions. The provision of Section 202 has also been interpreted by this Hon'ble Court in **S.S. Banu (supra)**.

The order impugned clearly shows that learned Magistrate issued process only after taking evidence of one witness namely Arunangshu Basu Ray on behalf of the complainant and this act on the part of the learned Magistrate cannot be said to be an enquiry within the meaning of mandatory provision of Section 202 of the Code of Criminal Procedure.

In the aforesaid view of the matter, the order impugned i.e dated 06.01.2018 in connection with Complaint Case No. CS-69831/2017 stands set aside with a direction upon the learned Magistrate to enquire into offence in compliance with the provision of Section 202 of the Code of Criminal Procedure, before issuing process.

With the observation, the revisional application stands disposed of.

Pending application, if there be any, also stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)