

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No.CRAN/1/2022, CRAN/2/2022

In

CRR 880 of 2022

Arpita Sarkar (nee Das) @ Arpita Das

Vs.

Rahul Chakraborty

For the Petitioner: Mr. Ayan Bhattacharjee, Adv.,
 Mr. Aditya Ratan Tiwary, Adv.,
 Mr. Suman Majumder, Adv.

For the Opposite Party: Mr. Ranabir Kumar Jaiswal, Adv.

Heard on: 21 March, 2023.

Judgment on: 4 May, 2023.

BIBEK CHAUDHURI, J. : –

1. The petitioner has filed the instant revision under Section 482 of the Code of Criminal Procedure praying for quashing of the proceeding in connection with AC 601 of 2017 under Sections 384/406/420/506/120B of the Indian Penal Code presently pending before the learned Judicial Magistrate, 2nd Court at Alipore.

2. Before describing the issue involved in the instant revision this Court finds it necessary to state the following facts:-

3. Sometimes in the year 2008 the opposite party came in touch with the petitioner through a social network site. They were in contact in virtual mode for about one year. For the first time the petitioner and the opposite party met during Durgapuja at Kolkata when the petitioner proposed the opposite party about his interest in her. During 2011 the opposite party who was working in a renowned company in Bangalore got an opportunity to visit Budapest for his official work. When the petitioner came to know about the said job opportunity she expressed her desire to buy a flat and asked the opposite party to invest money. The opposite party transferred a sum of Rs.8.8 lakhs through online bank transfer in the bank account of the petitioner maintained with State Bank of India, Sealdah Branch. On 20th December, 2014, the opposite party returned Kolkata after completing his official assignment. Sometimes in January, 2015 the opposite party came to learn that the petitioner had already married to one Dr. Subhadip Sarkar. On 4th March, 2017 the opposite party filed a complaint before the learned ACJM being case No.AC 601 of 2017 alleging commission of offence punishable under Sections 384/406/420/506/120B of the IPC against the petitioner herein and her husband Dr. Subhadip Sarkar. The learned ACJM took cognizance of offence and transferred the case to the 2nd Court of the learned Judicial Magistrate at Alipore.

4. The opposite party filed an affidavit in lieu of his examination under Section 200 of the Cr.P.C and on the basis of such affidavit the learned Magistrate issued process against the petitioner.

5. It is alleged by the petitioner that her father is a retired employee of State Bank of India and her mother was an employee of West Bengal Health Service. The father-in-law of the petitioner was a retired Assistant Commissioner of Railway Protection Force and her husband is a doctor by profession. Thus, the petitioner and her family hold considerable status, prestige and dignity in the society in the context of their educational and social background. It is admitted by the petitioner that she came to know the opposite party through social networking site in the year 2009-2010. The opposite party came to Kolkata from Bangalore and proposed the petitioner to marry. Initially the family members of the petitioner were attracted with the appearance of the opposite party but the opposite party started to enquire about the salaries of the parents of the petitioners, number of flats her father possessed etc. He also disclosed that he did not have good terms with his parents. During the period between January 2012 and December, 2014 the opposite party used to send money in the bank account of the petitioner voluntarily stating that the said money was sent for the personal use of the petitioner. In 2013 the father of the petitioner met with cerebro-vascular accident. In December, 2014 the petitioner's father asked the opposite party about the marriage between the petitioner and the opposite party. But the opposite party blatantly denied to marry the petitioner unless the petitioner's father gave him a sum of Rs.20 lakhs and a flat as a dowry. The father of the petitioner flatly refused such proposal of the opposite party. The petitioner also refused to entertain such proposal. She also came to know that the

opposite party was involved with another lady. Since then the petitioner did not maintain any relation with the opposite party. She also asked him not to send any money to his account. Thereafter on 30th January, 2015 the petitioner got married with Dr. Subhadip Sarkar. Further case of the petitioner is that being infuriated on rejection of the opposite party's proposal of marriage, the opposite party threatened the petitioner and since November 2015 the opposite party and one lady name Tithi Chakraborty started blackmailing the petitioner over telephone saying that they would expose the petitioner by uploading some of her photographs. They also threatened her saying that they would destroy her conjugal life as well as medical carrier of her husband. The petitioner lodged a general diary of such facts vide Muchipara Police Station G.D Entry No.1972 dated 20th May, 2016. On 7th August, 2016 the opposite party threatened the petitioner at Alipore Police Court the said matter also informed to the local P.S by lodging a GD. Subsequently, on 19th September, 2016 she filed a written complaint with the Officer-in-Charge of Muchipara Police Station which was registered as FIR Case No.330 of 2016. In the month of April, 2017 the petitioner and her husband came to know that a complaint Case being AC 601 of 2017 was instituted by the opposite party against the petitioner and her husband and the said case was pending before the learned Judicial Magistrate, 2nd Court at Alipore. Subsequently, on 27th August, 2019 both the parties have arrived at a mutual settlements wherein it was agreed that the parties would withdraw the respective cases filed against each other including AC 601 of

2017 as per the said settlement the petitioner withdrew Muchipara Police Station Case No.330 of 2016 however the opposite party refused to withdraw Case No.AC 601 of 2017. The petitioner vehemently denied transfer of fund to the tune of Rs.8.8 lakhs on account of purchase of flat by the petitioner. It is also submitted by the petitioner that the learned ACJM, Alipore took cognizance of offence under Section 384/406/420/506/120B of the IPC without application of judicial mind and even without making any inquiry under Section 202 of the Cr.P.C. Therefore, the petitioner submits that process issued against her by the learned Magistrate is illegal, invalid and inoperative and therefore she has prayed for quashing of the proceeding of the criminal proceeding instituted against her being AC 601 of 2017.

6. Mr. Ayan Bhattacharjee, learned Advocate for the petitioner at the outset takes me to the copy of the written complaint (Annexure P1) of the instant revision. It is pointed out by Mr. Bhattacharjee that the petitioner resides within the jurisdiction of 9, Gobinda Sen Lane within P.S Muchipara. Permanent residence of the petitioner is at village Mondal Para, post office Mothuadham within the Police Station Gaighata in the district of North 24 Parganas. Therefore, both the addresses of the petitioner situate outside the jurisdiction of the learned Additional Chief Judicial Magistrate, Alipore. It is also submitted by the learned Advocate for the petitioner that the opposite party/complainant was not examined by the learned Judicial Magistrate in compliance of Section 200 of the Code of Criminal Procedure. On the contrary, he submitted his evidence

on affidavit. This is not permissible under Section 200 of the Cr.P.C. In support of this contention Mr. Bhattacharjee refers to a Division Bench decision of this Court in the case of **S.S Binu vs. State of West Bengal & Anr.** reported in **(2018) Cri LJ 3769**.

7. Section 202 of the Code of Criminal Procedure runs thus:-

“S. 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.”

8. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" has been inserted by the criminal procedure (Amendment Act), 2005. The Division Bench of this Court in **S.S Binu** (supra) referred to various authorities starting from **Taylor vs. Taylor** reported in **(1875) 1 Ch. D. 426**, **Nazir Ahmed vs. Emperor : AIR 1936 PC 253**, **State of U.P. vs. Singhara Singh : AIR 1964 SC 358**, **State of Jharkhand & Ors vs. Ambay Cements & Anr. : 2005 1 SCC 368**, **Vijaysinh Chandubha Jadeja vs. State of Gujarat : (2011) 1 SCC 609** was pleased to hold that the amending provision of Section 202 of the Code of Criminal Procedure casts a mandatory duty upon the learned Magistrate to conduct an inquiry before issuing process under Section 204 of the Cr.P.C when the accused/petitioner is residing at a place beyond the area in which the learned Magistrate exercises his jurisdiction.

9. Mr. Bhattacharjee also refers to another decision of the Hon'ble Supreme Court in **National Bank of Oman vs. Barakara Abdul Aziz & Anr.** reported in **(2013) 2 SCC 488**, it is held by the Hon'ble Supreme Court that the duty of a Magistrate receiving a complaint is set out in Section 202 of the Cr.P.C. 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 of the Cr.P.C. 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 grounds for him to proceed further. The scope of enquiry under Section 202 of the Cr.P.C. 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 advert to any defence that the accused may have.

10. In support of his submission that the learned Magistrate taking cognizance of an offence on complaint has the mandatory duty to examine upon oath the complainant and the witnesses present, in any, and the substance of such examination shall be reduced in writing and shall be signed by the complainant and the witnesses and also by the Magistrate, he refers to an unreported decision of a Coordinate Bench of the case of **Rupayan Bhattacharya vs. The State of West Bengal & Anr. (CRR 2997 of 2019)** decided on 10th January, 2023.

11. Mr. Bhattacharjee, next submits that the order of cognizance of an offence under Section 384/406/420/506/120B of the IPC dated 4th March, 2017 passed by the learned Additional Chief Judicial Magistrate at Alipore was not passed in accordance with law. Firstly, the cognizance was taken without assigning any reason on the printed proforma which is

not sustainable. In **Abdul Rasheed & Ors. vs. State of U.P & Anr.** reported in **(2010) 3 JIC 761 (All)**, it is held by the Allahabad High Court that judicial orders cannot be allowed to be passed in a mechanical manner either by filling in blank on a printed proforma or by affixing a readymade seal etc. of the order on a plain paper. Such tendency must be deprecated and cannot be allowed to perpetuate. This reflects not only lack of application of mind to the facts of the case but is also against the settled judicial norms. Therefore, this practice must be stopped forthwith. Same decision has been reported in a subsequent case viz, **Satya Pal vs. State of U.P through Principal Secretary, Home, Lucknow & Anr.** (Application under Section 482 No.2083 of 2023) decided on 1st March, 2023.

12. Learned Advocate for the opposite party, on the other submits that the learned Judicial Magistrate, 2nd Court at Alipore issued process against the petitioner on perusal of the record, statement of the complainant and the documents filed by him. Therefore, the learned Magistrate may request inquiry under Section 202 of the Cr.P.C. Objection in this regard has raise by the learned Counsel for the petitioner has no leg to stand.

13. The learned Advocate for the opposite party next draws my attention to the averment made by the opposite party/complainant in paragraphs 7 to 10 of the petition of complaint. The allegation runs thus:-

“7. That Your Complainant states that your complainant got an opportunity to visit Budapest for his official assignment in the middle 2011. On coming to know of such job opportunity,

the accused No.1 expressed her desire to buy a flat which would have been an asset for your complainant in future and claimed that the complainant should invest the money he so earned during his job tenure instead of spending it.

8. That your complainant states that on 24.09.2011 the accused person No.1 induced your complainant to buy one flat and represented that a new building was construction near the parental house of the accused person no.1. The accused no.1 claimed that she had inspected a flat in the said project, the same measuring about 500 sq. ft for a consideration of Rs.10,00,000(Rupees Ten Lakhs). The complainant was also made to talk to a person claiming to be the developer of the said project.

9. That initially your complainant was hesitant to approve such proposal but after much persuasion and based on such glossy representations from the end of the accused no.1, the complainant acting in good faith delivered and/or transferred an amount of 8,08,000/- (Eight lakh and eight thousand) through online bank transfer between 05.01.2012 to 07.12.2014 in the account of the accused person no.1 bearing account no.20020283687 and 0584000100120795 with the State Bank of India, Sealdah and Punjab National Bank, College Street respectively. It is further stated that when your complainant asked for the document of the flat, he was avoided every time by the accused person no.1.

The relevant documents of online money transfer are annexed herewith and marked as "P-1".

10. Your complainant had left for Budapest in 14.10.2011 and eventually came back to Kolkata on 20.12.2014 after completing his official assignment; your complainant asked the accused person no.1 to marry him. However, the accused kept on insisting for more money on the pretext of buying the flat as well as projected that she was in need of money for the purpose of marriage. On being asked for the papers relating to the said flat or physical inspection of the same, the accused no.1 kept on delaying the same on some pretext or another and she started avoiding the complainant. On being suspicious of her activities, the complainant made an enquiry

through the friends. During January, 2015 the complainant came to know through friends and over the social media that that accused no.1 was to one Subhadip Sarkar, being the accused person No.2.”

14. It is submitted by the learned Advocate for the opposite party that the opposite party transferred the said amount of Rs.8.8 lakhs through online bank transfer between 5th January, 2022 to 7th December, 2014. Acceptance of the said amount by the petitioner would be revealed from the bank statement of both the petitioner and opposite party. It is further pointed out by the learned Advocate for the opposite party that the husband of the petitioner, namely, Dr. Subhadip Sarkar filed a revision being CRR 2124 of 2017 raising the same objection in compliance of the provision under Section 202(1) of the Cr.P.C and the order taking cognizance of offence by the learned ACJM, Alipore is bad in law. A Coordinate Bench of this Court considering earlier decision of this Court in **Dipak Ghosh Dastidar vs. Sanat Kumar Mukherjee & State** reported in **2001 C Cr LR (Cal) 392** held that when the petitioner failed to show how he has been prejudiced due to failure to hold inquiry under Section 202(1) Cr.P.C prior to issuance of process or that such noncompliance as occasioned a failure of justice in terms of Section 465 Cr.P.C, such noncompliance is a mere irregularity and failure to comply with the provisions of Section 202(1) of the Cr.P.C would not vitiate the proceeding or the order issuing process against the accused particularly without noncompliance thereof has not occasioned any failure of justice or

prejudice to the accused. Thus, it is submitted by him that the order of issuing process is not liable to be set aside.

15. In support of his contention learned Advocate for the opposite party further refers to an order passed by the Hon'ble Supreme Court in *Suo Moto Writ Petition (CRL) 2 of 2020* wherein it is held in paragraph 24.3 that while conducting inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examine all documents without insisting for examination of witnesses.

16. Learned Advocate for the opposite party also refers to the decision of **Vijay Dhanuka & Ors. vs. Najima Mamtaj Ors.** reported in **(2014) 14 SCC 638**. In paragraph 14 of the above mentioned report it is held by the Hon'ble Supreme Court that every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code. Thus, it is urged by the learned Advocate for the opposite party that it is the duty of the learned Magistrate to satisfy himself whether or not there is sufficient ground for proceeding against the accused by holding inquiry

under Section 202(1) of the Cr.P.C. If the learned Magistrate is satisfied on perusal of the documents that there is sufficient ground for proceeding against the accused, it is sufficient compliance of Section 202 of the Cr.P.C.

17. Having heard the learned Advocates for the parties and on careful perusal of the materials on record it is ascertained without any reasonable doubt that the order of taking cognizance passed by the learned Magistrate was in a proforma duly filled up by the learned Magistrate. The order of taking cognizance is being a judicial order, application of judicial mind is obvious. However, if an order of taking cognizance is passed in a mechanical manner by filling up some blank portions of the proforma there is every occasion for the Higher Court to raise a doubt as to whether the learned Magistrate had applied its judicial mind or not while taking cognizance of offence on the basis of a complaint.

18. It is unequivocally stated in Section 200 of the Code of Criminal Procedure-

“200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them.”

19. Therefore, Section 200 of the Cr.P.C postulates recording of substance of examination of the complainant by the court. The above procedure cannot be substituted by allowing the complainant to file an affidavit for compliance of Section 200 of Cr.P.C.

20. Section 202(1) clearly mandates that inquiry shall be conducted on receipt of complaint to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court. For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses. Since no mandatory inquiry was undertaken in clear terms under Section 202 of the Code even though the accused reside beyond the territorial jurisdiction of the learned trial court, the order issuing process and the subsequent orders passed by the learned trial court are set aside and the matter is remanded back to the learned trial court for proceeding afresh from the stage of inquiry as contemplated under Section 202 of the Code.

21. From plain reading of Section 200 to 204 of the Code of Criminal Procedure it is ascertain that the learned Magistrate is duty bound to

examine on oath the complainant and his witnesses before proceeding further except where there are certain express provisions deviating from general rule for such examination.

22. It is also clear that though the accused persons/petitioners reside beyond the territorial jurisdiction of the learned Magistrate he failed to conduct inquiry under Section 202 of the Cr.P.C. The word “shall” in Section 202 casts a mandatory duty upon the learned Magistrate to inquire about the veracity and truthfulness of a complaint where the accused persons reside outside the territorial jurisdiction of the learned Magistrate. Thus, in connection with Complaint Case No.AC 601 of 2017, the learned Magistrate acted illegally and with material irregularity from the stage of examination of the complainant under Section 200 and issuance of process against the accused persons under Section 204 of the Cr.P.C. Accordingly, the impugned orders of examination of the complainant on affidavit and issuance of process without complying with the provision of Section 202 of the Cr.P.C are quashed.

23. The learned Magistrate is directed to examine the complainant on oath and substance of his statement shall be recorded by him in terms of Section 200 of the Cr.P.C. The learned Magistrate is further directed to cause inquiry to ascertain the veracity and truthfulness of allegation made by the complainant against the accused persons under Section 202 of the Cr.P.C and thereafter on being satisfied with regard to existence of sufficient ground for proceeding with the case, the learned Magistrate shall pass necessary order in accordance with law.

24. The instant revision is accordingly allowed on contest however, without cost.

(Bibek Chaudhuri, J.)