

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 624 of 2019

Mr. Binod Chandra Sahoo

Vs.

The State of West Bengal & Anr.

For the Petitioner : Md. Shahjahan Hossain.

For the State : None.

For the Opposite Party : None.

Heard on : 11.07.2023

Judgment on : 26.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the Criminal Proceeding being CS No. 50251/2018 under Section 420/406 of the Indian Penal Code started pursuant to the complaint lodged by M/s. United Steel Corporation (the opposite party no. 2) herein pending disposal before the learned 8th Metropolitan Magistrate at Calcutta.
2. It is submitted that the authorized representative of opposite party no. 2 was examined under Section 200 Cr.P.C. on 31.10.2018 together with

one Shekhar Agarwal by the learned Trial Court and it reveals from the initial deposition that the opposite party no. 2 has not been able to make out prima facie case against the petitioner even then the learned Court was pleased to issue process against the petitioner in most mechanical manner without even applying the judicious mind.

3. The learned Magistrate has issued process under Section 204 of the Criminal Procedure Code without exhausting the statutory obligation under Section 202 of the Criminal Procedure Code whereas admittedly the petitioner resides outside the jurisdiction of the learned trial court. As such order of cognizance suffers from perennial irregularity apparently visible.
4. From the materials on record, it appears that the parties to this case have a business transaction dispute. The opposite party no. 2 has filed the complaint in this case. **The only address of the petitioner/accused in the petition of complaint is Proprietor of M/s Bindu Industries, At P/o- Chauliaganj, Town-Cuttack 753004, Odisha.**
5. **The order issuing process, dated 28.08.2018, is as follows:-**

CS/50251/18

Order date: 28.08.2018

Today is fixed for S/A.

Today the representative of the complainant namely, Shekhar Agarwal and the witness namely Indranil Das are present with their Ld. Advocate.

Shekhar Agarwal and Indranil Das as PW-1 and PW-2 have been initially examined on S.A u/s 200 Cr.P.C.

It appears that the allegation u/s 406/420 of IPC has been established prima facie against the accused person.

Issue summons at once u/s 204 Cr.P.C. upon the accused at once.

To 10.10.2018 for S/R.

Complainant is directed to file requisites at once.

D/C

Sd/-
M.M. 8th Court, Calcutta.

6. Vide order dated 10.10.2018 the learned Magistrate was pleased to issue bailable warrant of arrest against the petitioner.

7. In the present circumstances, the following judgments are relevant:-

- (i) ***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 Mamta 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."

(ii) In **Sunil Todi and Ors. vs State of Gujarat and Anr.**,

Criminal Appeal No. 1446 of 2021, on 03.12.2021, held:-

"31. The second submission which has been urged on behalf of the appellants turns upon Section 202 CrPC, which is extracted:

"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, 1 [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.”

32.

33. The provisions of Section 202 which mandate the Magistrate, in a case where the accused is residing at a place beyond the area of its jurisdiction, to postpone the issuance of process so as to enquire into the case himself or direct an investigation by police officer or by another person were introduced by Act 25 of 2005 with effect from 23 June 2006. The rationale for the amendment is based on the recognition by Parliament that false complaints are filed against persons residing at far off places as an instrument of harassment. In **Vijay Dhanuka v. Najima Mamtaj20**, this Court dwelt on the purpose of the amendment to Section 202, observing:

“11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process ‘in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction’ and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words ‘and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction’ were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far-off places in order to harass them. The note for the amendment reads as follows:

‘False complaints are filed against persons residing at far-off places simply to harass them. In order to see that 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.'

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."

34. *This Court has held that the Magistrate is duty bound to apply his mind to the allegations in the complaint together with the statements which are recorded in the enquiry while determining whether there is a prima facie sufficient ground for proceeding. In **Mehmood UI Rehman v. Khazir Mohammad Tunda**²¹, this Court followed the dictum in **Pepsi Foods Ltd. v. Special Judicial Magistrate**²², and observed that setting the criminal law in motion against a person is a serious matter. Hence, there must be an application of mind by the Magistrate to whether the allegations in the complaint together with the statements recorded or the enquiry conducted constitute a violation of law. The Court observed:*

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to

whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.”

“22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC 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 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, 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 CrPC, the High Court under Section 482 CrPC 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.”

*These decisions were cited with approval in **Abhijit Pawar v. Hemant Madhukar Nimbalkar**²³. After referring to the purpose underlying the amendment of Section 202, the Court observed:*

*“25. ... the amended provision casts 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 enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment *Mehmood Ul Rehman v. Khazir Mohammad Tunda* [*Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]...”*

35. *While noting that the requirement of conducting an enquiry or directing an investigation before issuing process is not an empty formality, the Court relied on the decision in **Vijay Dhanuka** which had held that the 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 enquiry envisaged under Section 202 of the Code.*

36. *In **Birla Corporation Ltd. v. Adventz Investments and Holdings**²⁴, the earlier decisions which have been referred to above were cited in the course of the judgment. The Court noted:*
“26. 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 CrPC or whether the complaint should be dismissed by resorting to Section 203 CrPC 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 CrPC, 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.”

Hence, the Court held:

“33. 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 the 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 [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]...”

*The above principles have been reiterated in the judgment in **Krishna Lal Chawla v. State of U.P25.**”*

The Court considered the same later, in the light of a proceedings under Section 138/141 N.I. Act.

(iii) In **Vijay Dhanuka Etc vs Najima Mamtaj Etc, Criminal**

Appeal Nos. 678-681 of 2014, on 27 March, 2014, held:-

“..... the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:

“2. xxx xxx xxx

(g)”inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

xxx xxx xxx”

*It is evident from the aforesaid provision, 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.”

8. The order dated 28.08.2018 is under Section 200 Cr.P.C. and not 202 Cr.P.C., even though the petitioner admittedly does not have a local address, within the jurisdiction of the Court issuing process.
9. Admittedly, the only address on record of the petitioner is Cuttack, in the State of Orissa. Thus, outside the jurisdiction of the trial Court in the present case.
10. It is clear that there has been no application of mind by the Magistrate. No inquiry, which is mandatory in such cases has been conducted. The order also shows that without any inquiry and without considering any documents (as this is a business transaction dispute) the trial court has found a prima facie case. There is absolutely no application of mind in the said order.
11. Thus the order dated 28.08.2018 and the order dated 10.10.2018 issuing bailable warrant of arrest, passed by the Learned Metropolitan Magistrate, 8th Court, Calcutta, in Criminal proceeding being CS No. 50251 of 2018, being not in accordance with law are set aside.
12. **The Learned Magistrate shall hear the matter afresh, duly complying with the provision of Section 202(2), Code of the Criminal Procedure, and pass necessary orders in accordance with law.**

- 13. The revisional application being CRR 624 of 2019 is accordingly disposed of.**
- 14.** No order as to costs.
- 15.** All connected applications, if any, stands disposed of.
- 16.** Interim order, if any, stands vacated.
- 17.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 18.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)