

D/L46
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C.R.R.797 of 2021

In Re: A petition under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973;

Rakesh Singh @ Rakesh Kumar Singh
Versus
Dilip Kumar Agarwal

Mr. Shibaji Kumar Das,
Ms. Rupsa Sreemani,
Ms. Riya Sarkar.

...for the petitioner.

Affidavit-of-service so filed by the learned advocate for the petitioner as also the supplementary affidavit be kept with the record.

The present revisional application has been preferred challenging the proceeding being Case No.CN/838/2020.

Mr. Das, learned advocate appearing for the petitioner submits that the present petitioner has been shown to be an agent of one Diganta Barua who received the goods/TMT bars, there is no allegation that the petitioner is in any way involved either for custody of the goods or any money received and only allegation against the present petitioner is that he along with said Diganta Barua and another approached the complainant company for supply of TMT bars. The main thrust of the complaint is on the representation made in order to supply the TMT bars. The present petitioner was present at the relevant time when such representation was made as has been alleged in the petition of complaint.

I have also checked the order dated 21st January, 2021 and I find that the learned Magistrate on an examination under Section 200 of the Code of Criminal Procedure of the complainant was pleased to issue process under Section 204 of the Code of Criminal Procedure prima facie holding, that the offence under Sections 406/420/506 read with Section 120(B) of the Indian Penal Code has been made out.

I have considered the submission of the learned advocate for the petitioner and I am of the opinion that the proceedings are at the nascent stage for assessing the culpability of the present petitioner so far as his representation at the initial stage is concerned. However, having regard to the amendment so incorporated in respect of person staying outside the jurisdiction of the court, I am of the opinion that there is non-compliance of Section 202 of the Code of Criminal Procedure.

Accordingly, the order dated 21st January, 2021 is hereby set aside. The learned Magistrate would conduct an exhaustive enquiry under Section 202 of the Code of Criminal Procedure and thereafter decide regarding the complicity of the present petitioner and others as well as the allegations in the complaint for being proceeded with. The learned Magistrate after the enquiry will take a decision whether to proceed under Section 203 of the Code of Criminal Procedure or Section 204 of the Code of Criminal Procedure.

With the aforesaid observations, CRR 797 of 2021 is disposed of.

Pending application, if any, is consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)