

19-04-2023
Subha
Item no. 49
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
C.R.R 1321 of 2021

Diganta Baruah @ Diganta Barua
-versus-
Dilip Kumar Agarwal

Re : An application under Section 482 read with Section 401 of the Code of Criminal Procedure.

Mr. Shibaji Kuamr Das
Ms. Rupsa Sreemani

...for the petitioner.

Affidavit of service so filed by the petitioner be kept with the record.

The present complaint case being CN/838/2020 is pending before the learned Metropolitan Magistrate, 7th Court, Calcutta. Learned advocate appearing on behalf of the petitioner draws the attention of this court to the order dated 24-12-2020 which reflects that on the complaint being filed cognizance of offence was taken by the learned Additional Chief Metropolitan Magistrate, Calcutta and transferred to the learned Metropolitan Magistrate, 7th Court, Calcutta for enquiry and disposal.

The order dated 21st January, 2021 reflects that the complainant was examined-in-chief on affidavit which was filed by the representative of the complainant. The learned court thereafter issued process under Sections 406/420 of the Code of Criminal Procedure.

Having regard to the fact that the complaint was filed against three accused persons all of whom were residing outside the jurisdiction of learned Additional Chief Metropolitan Magistrate, Calcutta and the nature of the allegations made in the petition of

complaint indicating non-payment of amount on supply of goods, I am of the view that the learned Metropolitan Magistrate, 7th Court, Calcutta prior to issuance of process should have postponed such process and conducted an enquiry under Section 202 of the Code of Criminal Procedure.

In view of the statement of object and reasons associated with the incorporation of mandate provisions of Section 202 of the Code of Criminal Procedure, I am of the opinion that the order dated 21.01.2021 was passed in ignorance of the provisions of Section 202 of the Code of Criminal Procedure. The same, as such, is set aside.

Consequently, all orders passed after 21.01.2021 by the learned Metropolitan Magistrate, 7th Court, Calcutta is also set aside.

Warrant of arrest, if issued against the accused persons would be deemed to be quashed. The learned Metropolitan Magistrate, 7th Court, Calcutta is directed to freshly conduct an enquiry, assess the complicity of the petitioner and thereafter take a decision whether to proceed under Section 203 or Section 204 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 1321 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby made absolute.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

