

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R 1815 of 2022

Dr. Asim Bag
Vs.
The State of West Bengal & Ors.

For the Petitioners:	Mr. Mr. Y.J.Dastoor, Sr. Adv. Mr. Samrat Goswami, Adv. Ms. Sonia Grewal, Adv.
For the respondent No.2 to 5:	Mr. Ayan Bhattacharjee, Adv. Ms. Reshmi Ghosh, Adv. Mr. Koustav Bagchi, Adv.
For the State:	Mr. Swapan Banerjee, Adv. Mr. Anindya Sundar Chatterjee, Adv.

Heard on: 28 February, 2023.

Judgment on: 15 March, 2023.

BIBEK CHAUDHURI, J. : –

1. Order dated 30th April, 2022 passed by the learned Judicial Magistrate 2nd Court at Barasat with the Complaint Case No.1562 of 2018 directing the Inspector-in-Charge of New Town to conduct investigation under Section 202 of the Criminal Procedure Code after initiating process of inquiry by himself by recording evidence of witness on oath, is assailed in the instant revision on the ground that the said order dated 30th April, 2022 is illegal, inoperative and the learned Magistrate exceeded his jurisdiction in passing such order.

2. Brief facts of the instant case is that on 27th August, 2018 the petitioner had lodged a court complaint being Complaint Case No.1562 of

2018 and the learned Magistrate took cognizance of offence under Section 190(1)(a) of the Code of Criminal Procedure. The case was subsequently transferred to the learned Judicial Magistrate, 2nd Court at Barasat and on 1st November, 2018 the complainant was examined under Section 200 of the Cr.P.C. On perusal of the petition of complaint and the statement of the complainant the learned Magistrate held that there is sufficient ground for proceeding under Section 506/506(2)/120B/34 of the IPC against the accused persons and issued process under Section 204 of the Cr.P.C.

3. The said order was challenged before this Court by filing a revision by the accused/opposite parties. The said criminal revision was registered as CRR No.987 of 2019. The aforesaid revision was disposed of by a Coordinate Bench of this Court vide order dated 23rd March, 2022. Relevant portion of the order dated 23rd March, 2022 passed in CRR No.987 of 2019 is quoted below:-

“Having regard to the fact that some of the accused persons were residing outside the jurisdiction of the court it was incumbent upon the learned Magistrate prior to the issuance of process to comply with the provisions of Section 202 of the Code of Criminal Procedure as reiterated by the Hon’ble Supreme Court in the case of National Bank of Oman – vs- Barakara Abdul Aziz & Anr reported in (2013) 2 SCC 488 and in the case of Abhijit Pawar –vs- Hemant Madhukar Nimbalkar & Anr reported in (2017) 3 SCC 528. Thus, the order issuing process is hereby set aside.

Accordingly, the revisional application being CRR 987 of 2019 is partly allowed.

Learned Magistrate is directed to first adhere to the provisions of Section 202 of the Code of Criminal Procedure, satisfy himself regarding the possibility of any alleged offence being committed having regard to the fact that some of the proposed accused are residing abroad.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.”

4. In the trial court date was fixed on 30th April, 2022. As per the direction passed in CRR No.987 of 2019, the learned Magistrate examined one Sambhu Samanta under Section 202 of the Cr.P.C. Subsequent to his examination the learned Magistrate held that the matter needs to be investigated further by the local police station under Section 202 of the Cr.P.C as the depositions cannot be the sole ground to issue process and as such the learned Magistrate postponed issuances of process against the accused. Inspector-in-Charge, New Town Police Station was directed to cause investigation into the matter in accordance with Section 202 of the Cr.P.C and submit a report on the next date fixed. At this stage, the learned Senior Counsel joins the issue raising a question as to whether it is permissible for the learned Magistrate to direct police investigation under Section 202 of the Cr.P.C after initiating inquiry by himself by examining a witness namely, Sambhu Samanta under Section 202 of the Cr.P.C.

5. Mr. Dastoor, learned Senior Counsel on behalf of the petitioner takes me to Section 202 of the Cr.P.C. Section 202 runs thus:-

“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, 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.”

6. Relying on Section 202(1) of the Cr.P.C, it is submitted by the learned Advocate for the petitioner that in an appropriate case the learned Magistrate may postpone the issue of process against the accused. Cr.P.C amendment of 2005 has introduced a clause in Subsection (1) of Section 202 that where the accused is residing at a place beyond the area in which the learned Magistrate exercises his jurisdiction it is mandatory for the learned Magistrate to postpone the issue of process against the

accused and cause inquiry under Section 202 of the Cr.P.C. Mr. Dastoor has next pointed out that such initial inquiry/investigation can be made:-

- (i) Either by the learned Magistrate himself.
- (ii) Or by directing an investigation to be made by a Police Officer, or
- (iii) By such other person as he thinks fit.

7. The purpose of such inquiry/investigation is to decide whether or not there is sufficient ground for proceeding.

8. Mr. Dastoor submits that when the learned Magistrate decided to inquire into the case himself and examined a witness under Section 202 of the Cr.P.C, he cannot direct an investigation to be made by a Police Officer because the provision under Section 202 of the Cr.P.C clearly denotes that the learned Magistrate is empowered to take either of the three options as stated above under Section 202 of the Cr.P.C. The learned Magistrate is not empowered to take two or all the provisions of inquiry or investigation under Section 202 of the Cr.P.C. In support of his contention Mr. Dastoor refers to a Division Bench judgment of this Court in the case of **Sankar Chandra Ghose vs. Roopraj S. Bhansally** reported in **(1981) 1 CHN 453**. The Division Bench of this Court held in paragraph 17 of the report as hereunder:-

“17. On going through the provision of Section 202 of the Code, we are of the opinion that in a particular case if a Magistrate postpones the issue of summons then two courses are open to him. He can either make an enquiry into the case himself or direct that an investigation be made. The Magistrate can direct an investigation to be made either by a

Police Officer or by such other person as he thinks fit if he makes an enquiry himself, he cannot direct investigation. Again, when he directs an investigation, he cannot enquire into the matter himself. This is exactly what has been found by their Lordships in the Bench decision referred to above in interpreting the provision of Section 202 of the Code. In view of the clear finding of the Division Bench, we cannot accept what has been laid down in the three decisions of the single Judges. In the result, it must be held that the order for second enquiry in the present case is illegal and, that being so, the impugned order must be set aside. But simply because the order for second enquiry is set aside, we are not quashing the entire proceeding. The learned Magistrate will proceed with the case on the basis of the first enquiry report and the other material on record in accordance with law.”

9. Mr. Dastoor also refers to a subsequent decision of a Coordinate Bench of this Court in the case of **Dr. Biswajit Mondal vs. The State of West Bengal & Ors.** reported in **(2015) SCC OnLine Cal 908**. In this decision, ratio of **Sankar Chandra Ghose** (supra) was respectively followed and it was held that an approach of adopting one procedure initially and then switching over to the next and passing a hybrid composite order is contrary to the procedure laid down in the Code.

10. Mr. Ayan Bhattacharjee, learned Advocate for the opposite parties submits that in **Bhagat Ram vs. Surinder Kumar & Ors.** reported in **(2004) 11 SCC 622**. Similar action of the learned Magistrate on the ground of having once taken cognizance and proceeded to hold the inquiry under Section 202 of the Cr.P.C was challenged before the Hon’ble Supreme Court. In paragraph 4 of the aforesaid report the Hon’ble Supreme Court was pleased to give reply to the above issue in the following words:-

“4. It is clear from a perusal of the order made by the learned Magistrate that he has not done anything other than to comply with the provisions of Section 202(1) proviso (b) of the Code of Criminal Procedure, that after examining the complainant and his witnesses he found that it was necessary to further probe into the matter and, therefore, directed investigation to be done by the police and after the investigation was done by the police and on report being filed by them, he heard the matter afresh and directed issue of summons. We find that the procedure adopted by the learned Magistrate is perfectly in order. However, Shri S.B. Wad, learned Senior Advocate who appears for Respondent 1 drew our attention to the decision of this Court in *Suresh Chand Jain v. State of M.P.* and contended that the learned Magistrate had already taken cognizance in the matter before directing the investigation/inquiry by the police and such a course was not permissible. But on the facts in the said case the question that fell for consideration is that whether a Magistrate can direct investigation of the matter before taking cognizance of an offence and without examining the complainant on facts. It was held that he could direct the police to register an FIR and investigate the matter. Even if the scope of investigation is limited as noticed in the said decision, the Magistrate has powers under Section 202(1) of the Code of Criminal Procedure to direct investigation and in the meanwhile he may postpone issue of process against the accused by adopting any one of the courses mentioned in Section 202(1). As to when cognizance of an offence is taken will depend upon the facts and circumstances of each case and it is not possible to state the same with precision. Obviously, it is only when the Magistrate applies his mind for the purpose of proceeding under Section 200 Cr.P.C and subsequent sections that it can positively be stated that he has taken cognizance. To derive this inference we rely upon the decision in *Narayandas Bhagwandas Madhavdas v. State of W.B.* and *Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy*. In the instant case the learned Magistrate has called for an investigation before proceeding further even after examining the complainant and his witnesses on oath. Hence the observation therein would not be of assistance to the respondents in this case. Therefore, we set aside the order

made by the High Court and restore the proceedings before the learned Magistrate. The appeal is allowed accordingly.”

11. It is contended by Mr. Bhattacharjee that similar question again came up before the Hon’ble Supreme Court for consideration in **Manharibhai Muljibhai Kakadia & Anr. vs. Shaileshbhai Mohanbhai Patel & Ors.** reported in **(2012) 10 SCC 517**. The Hon’ble Supreme Court was pleased to hold that Section 202 of the Code has twin objects: (1) to enable the Magistrate to scrutinize carefully the allegations made in the complaint with view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate may hold inquiry under Section 202 Cr.P.C or direct an investigation to be made by a Police Officer. Legal position is no longer *res integra* in this regard. In **Vadilal Panchal vs. Dattatraya Dulaji Ghadigaonkar, AIR 1960 SC 1113** with reference to Section 202 of the Cr.P.C 1989 the Hon’ble Supreme Court held that inquiry under Section 202 was for the purpose of ascertaining the truth or falsehood of the complainant, i.e, for ascertaining whether there was evidence in support of the complaint so as to justify the issuance of process and commencement of proceeding against the person concerned.

12. Referring to the decision of the **J. Jayalalitha vs. Union of India & Anr.** reported in **AIR 1999 SCC 1912** it is submitted by Mr. Bhattacharjee that the word “or” in Section 202(1) of the Code of Criminal Procedure should not be read as disjunctive to hold that the legislature formulated three separate compartments for inquiry or investigation under Section 202(1) Cr.P.C and if one provision is adopted by the learned Magistrate he cannot take recourse of another provision for the sake of coming to an appropriate decision as to whether process should be issued against the accused persons or not. During purport of Section 202(1) of the Cr.P.C would mean that the Magistrate has the power to either or both the things. Having heard the learned Counsels for the parties and on careful perusal of the material on record as well as the pronouncement made by the Division Bench of this Court and the Hon’ble Supreme Court I feel it necessary to state that Section 202 of the Cr.P.C has twin objects: (1) to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate may hold inquiry under Section 202 Cr.P.C or direct an investigation to be made by a Police Officer or other person whom he thinks fit. Section 202

comes in a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV of the Code, but the same is deemed insufficient to take a decision as to the next stage in the prescribed procedure. In such a situation the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that Section and investigation “for the purpose of deciding whether or not there was sufficient ground for proceeding.”

13. In Complaint Case No.1562 of 2018 the complainant was examined under Section 200 of the Cr.P.C. On the basis of complainant’s statement, the learned Magistrate issued process against the accused persons under Section 506/506(2)/120B/34 IPC against the said order. A Coordinate Bench disposed of CRR No.987 of 2019 directing the learned Magistrate to take recourse of Section 202 of the Code because of the fact that two of the accused persons stayed outside the local limits of the jurisdiction of the learned Magistrate. On 30th April, 2022 the learned Magistrate examined one Sambhu Samanta. Thereafter, he was of the view that the matter need to be investigated further by the local police station.

14. At this stage it is necessary to keep in mind the facts of the case. The complainant and accused No.1 are both husband and wife. It is alleged by the complainant that his younger son was not able to perform well in his academic due to immoral character of accused No.1 and frequent visit of accused No.4 and 5 who are the parents-in-law of the complainant. The complainant stays in Singapore. In order to keep constant watch and vigil over his younger son he installed close circuit

camera in different portions of his flat at Rajarhat to monitor the whereabouts of his son through his mobile phone from remote place in Singapore. In course of such monitoring it was revealed to the complainant that his wife has been leading an immoral and illicit relationship with one Rajesh who has not been made an accused in this case when he revealed the matter to the accused persons, they criminally intimidated him.

15. I have already recorded that the complainant was examined under Section 200 of the Cr.P.C on 1st November, 2018. On 5th May, 2018 after the learned Magistrate was directed to comply with the conditions contained in Section 202 of the Cr.P.C by this Court she examined one Sambhu Samanta on 5th May, 2022. It is clearly found from the examination of Sambhu Samanta recorded by the learned Magistrate that the said Sambhu Samanta was examined under Section 200 of the Cr.P.C. It is found from the statement of Sambhu Samanta on oath that under the instruction of the complainant he installed CCTV Camera with audio video facilities in the residential flat of the complainant sometimes in 2014 subsequently the complainant informed him that his CCTV cameras were not working then he inspected the said flat and found that the power switch of CCTV cameras was turned off manually. Under the instruction of the complainant he turned on the CCTV camera permanently. Sambhu Samanta also stated on oath that the complainant told him that there was an attempt on his life in Italy and after that he never comes to Kolkata out of fear.

16. From the initial statement of Sambhu Samanta this Court does not find any material of offence under Section 506/506(2) against the accused persons.

17. Though in the order sheet it was written by the learned Magistrate that witness Sambhu Samanta was examined under Section 202 of the Cr.P.C but in his deposition sheet it is clearly recorded that the said Sambhu Samanta was examined on oath under Section 200 of the Cr.P.C. The statement of the above named witness was recorded first and thereafter order dated 30th April, 2022 was passed by the learned Magistrate. Considering the materials annexed with the instant revision this Court is of the view that witness Sambhu Samanta was really examined under Section 200 Cr.P.C and the learned Magistrate did not commence inquiry by himself. Therefore, there is no illegality in directing the Inspector-in-Charge, New Town Police Station to cause further investigation into the matter in accordance with Section 202 of the Cr.P.C. “For the purpose of deciding whether or not there is sufficient ground for proceeding.”

18. For the reasons stated above, I do not find any merit in the instant revision and accordingly the revision is dismissed on contest however, without cost.

(Bibek Chaudhuri, J.)