

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.R.R 2331 of 2018
Sajjan Kumar Garg
Vs.
Union of India**

For the petitioners	:	Mr. Sandipan Ganguly
	:	Mr. Dipanjan Dutt
	:	Mr. Sayantak Das

For Union Of India	:	Mr. Smrajit Roy Chowdhury
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Heard on	:	22.09.2023
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Judgment on	:	05.10.2023
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Ajoy Kumar Mukherjee, J.

1. This is an application under section 482 of the Code of Criminal Procedure 1973 (herein after called as Cr.P.C) wherein petitioner has prayed for quashing of the proceeding of the complaint case no 789 of 2018 pending before the court of learned Chief Judicial Magistrate, Alipore, south 24 parganas and all orders passed in the said proceeding. Petitioner contended that the complainant/opposite party herein filed complaint alleging commission of offence by the petitioner and one Jibendra Mishra punishable under section 120 B of the Indian Penal code (in short IPC) along with section 277A of the Income Tax Act 1961 (in short I.T. Act 1961) and

against eleven other companies punishable under section 120B of the IPC with Section 277A /278B of the I.T. Act 1961.

2. The allegations levelled in the said complaint are *interalia* to the effect that a survey was conducted at the office premises no. 33/1 N.S. Road, Kolkata-1 on 12.11.2013 where the statement of the petitioner was recorded under section 131 of the I.T. Act, 1961. Another statement of the petitioner was recorded on 30.04.2014. It is alleged that in both the statements the petitioner admitted that he had provided accommodation entries in the form of share capital, share premium and unsecured loan to the Doller Group of Industries through shell companies managed by him with the help of one Jibendra Mishra whose statement was also recorded on 18.11.2013. It is further alleged that from the statements of the petitioner, it appeared that five companies of the Doller Group have raised share capital/premium during the financial year 2010-11 and 2011-12. It is further alleged that some of the allottees are the shell entities being managed by the petitioner and it has been accepted by the petitioner in the aforesaid recorded statements. Accordingly complainant alleged that the petitioner herein and the said Jibendra Mishra have committed the offence punishable under section 120B of the IPC with Section 277A of the I.T. Act 1961 and the other 11 companies have committed offence punishable under Section 120B of the IPC with section 277A/278B of the IT Act 1961.

3. Mr. Sandipan Ganguly learned counsel appearing on the behalf of the petitioner submits that the petitioner is completely innocent and he is no way connected with the commission of alleged offence and has been falsely implicated in the instant case. He further contended that the impugned

proceeding initiated at the instance of the opposite party which does not disclose the ingredients of the offence as alleged and learned Court below was not justified in passing the order impugned. He further contended that the offence under section 277A of the Income Tax Act 1961 is made punishable with imprisonment for a term which shall not be less than 3 months but which may extend to 3 years and fine. Section 468 of the Cr.P.C provides that no court shall take cognizance of an offence after the expiry of the period of limitation and the period of limitation shall be 3 years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Section 469(1) (a) of the Cr.P.C. provides that the period of limitation shall commence on the date of the offence.

4. Mr. Ganguly further submits that in the instant case the statement of the petitioner was recorded on oath on 12.11.2013 and on 30.04.2014. Thus in terms of section 469(1)(a) of the Cr.P.C the period of limitation commences on and from 12.11.2013 and 30.04.2014. Accordingly such period of limitation expired upon the passage of three years therefrom in the month of November 2016 and April 2017. However the instant complaint has been filed on 21.03.2018 i.e. long after the expiry of the prescribed period of limitation and the Magistrate ought not to have taken cognizance on the alleged offences which is barred by law. Therefore the continuance of further proceeding will be an abuse of the process of law. As such the petitioner has prayed for quashing the entire proceeding.

5. Before going to further details let me quote the order impugned passed by learned Chief Judicial Magistrate at Alipore, being order no. 1 dated 28.03.2018 and the next order that is order dated 10.05.2018.

“Order No.1 Dated 28.03.2018:- A petition of Complaint is filed u/s 200 Cr.P.C Heard Ld. Advocate for the complaint.

Perused the petition of complaint. Considered. Cognizance is taken.

Let the case be taken to file my personal file for disposal in accordance with law. Fixing 10.05.18 for S/R.

Sd/Illegible, C.J.M
Alipore

Order dt. 10.05.2018:- today is fixed for S.R and appearance, complaint files hazira.

Accused no.1 & 2 namely Sajjan Kumar Garg and Jivendra Mishra appear by filing vakalatnama and prays for bail.

Separate petitions have been filed on behalf of the accused no. 3 to 13 with an undertaking to file petitions u/s 305 Cr.P.C Vakalatnama has been filed on their behalf.

Perused the bail application, petition of complaint as well as other materials available on record.

Considering the nature of the proceeding and all such facts and voluntary surrender of the accused persons, prayer for bail is considered and allowed.

The accused persons may find bail of Rs. 1,000/- each with one registered surety of like amount in-default to judicial custody till 18.05.2018. If the accused persons avail bail, they are directed to appear before this court on 18.8.2018 for appearance and taking steps by the accused no.3 to 13.

Sd/- Illegible, C.J.M
Alipore

Later:- Bail bonds are furnished by the registered surety on behalf of the two accused persons namely Sajjan Kumar Garg and Jivendra Mishra.

Let the bail bonds be accepted.

To. 18.8.2018 for appearance

Sd/- Illegible, C.J.M
Alipore”

6. From the aforesaid orders it is clear that no observation was made by the Magistrate as to whether the complaint constitute any offence or not and if constitutes offence then under which provision of law, such offence is punishable nor there is anything to suggest that the magistrate concerned had at all applied his judicial mind while taking cognizance and passing order no. 1 dated 28.03.2018. There is nothing in the said order that Magistrate had at all ordered to issue any process under section 204 of Cr.P.C nor there is anything to suggest that the Magistrate was satisfied that there are sufficient grounds for proceeding and/or proceeding is required to be commenced against the accused by compelling his attendance before

the court. There is nothing to show that Magistrate at all perused the relevant materials including alleged recorded statement of accused dated 12.11.2013 and 30.04.2014 to ascertain that there are grounds to proceed and that the complaint is not barred by any law.

7. It may not be out of context to reiterate that chapter XIV of the Cr.P.C. is under the heading “conditions requisite for initiation of proceedings” and the opening section i.e. Section 190 deals with “cognizance of offence by Magistrates”. Accordingly it is to be remembered that taking cognizance of an offence by a Magistrate is a judicial act. Cognizance can be said to be taken when Magistrate applies his judicial mind for proceeding under section 200 of Cr.P.C. Necessity for application of judicial mind in it’s proper perspective also evident from the words used in section 190 which is “may take cognizance”. However at the time of taking cognizance, Magistrate is only to consider the averments made in the complaint and he is not supposed to appreciate evidence at the time of taking cognizance.

8. Be that as it may, from the next order i.e. order dated 10.05.2018, it appears that accused no. 1 and 2 on receipt of summon, appeared before the court and prayed for bail. It is true that under section 200 proviso (a) it is not necessary for Magistrate to examine the complainant when the complaint is made by a public servant acting or purporting to act in the discharge of his official duties. This does not mean that in such cases while taking cognizance and while Magistrate intends to proceed by using process in terms of Section 204 of the Cr.P.C, there is no requirement to ascertain whether allegations *prima*

facie constitute offence or not and whether accused is *prima facie* responsible for causing the offence or not. Even where the complainant is a public servant, still magistrate is duty bound to find out whether there is or nor sufficient ground for proceeding. The magistrate cannot exercise his jurisdiction either in respect of taking cognizance or in respect of issuance of process in a routine manner but he is required to apply his mind, though examination of complainant has been dispensed with. Even in such cases, the magistrate has to carefully scrutinize evidence brought on record to find out the truthfulness as well as legality and validity of the allegation and to examine if any offence is *prima facie* committed by all or any of the accused. It was never the intention of the legislature that whenever a complaint has been lodged by a Public Servant the Magistrate has no other alternative but to act like a postal authority in the matter of issuance of process.

9. It is trite law that the Magistrate while issuing the process under Section 204 of the Cr.P.C. must in brief set out the allegations in the petition of complaint and the materials brought on record and must state that in his opinion, process should be issued. The court is to see whether *prima facie* case is established and ingredients of offence can be culled out from the complaint and only when there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, process should be issued, even in cases under section 200 proviso (a) of Cr.P.C.

10. It is well settled principle of law in view of judicial pronouncements that in case of a complaint under section 200 Cr.P.C.

the Magistrate can take cognizance of the offence if made out and then to ascertain whether a prima facie case is made out against the accused to issue the process, so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. For such purpose the words "sufficient ground" used under Section 203 Cr.P.C. have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction.

11. Considering the present fact and circumstance of the case and that there is no reflection in the order impugned that concerned magistrate had at all applied his judicial mind to determine as to whether there are grounds for proceeding and for issuance of process and surprisingly without any order of issuance of process by the Magistrate, process was served upon the accused, who appeared and prayed for bail, which clearly reflects non application of judicial mind by Magistrate and noncompliance of relevant provisions of Cr.P.C.

12. The orders impugned being order no. 1 dated 28.03.2018 and also subsequent orders passed in aforesaid complaint case no. 789 of 2018, by learned Chief Judicial Magistrate, Alipore (Union of India Vs. Sri Sajjan Garg and 12 others) are hereby set aside. Learned Magistrate is directed to apply his judicial mind afresh on the complaint lodged by opposite party herein on the point of taking cognizance and if required on the point of issuance of process and to pass appropriate order taking aid from the relevant provisions laid down in chapter XIV and if required under relevant

provision of subsequent chapters of Cr.P.C, without being influenced by any observation made herein.

13. C.R.R. **2331 of 2018** is accordingly disposed of.

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

(AJAY KUMAR MUKHERJEE, J.)