

17.02.2023
Item No. 34
Ct. No. 236
AGM

CRR 3405 of 2008

In the matter of:- Mohan Dhir @ Mon Kohan Dhir @ M. M. Dhir
...petitioner

Mr. Ayan Bhattacharya,
Mr. Somdev Ash,
Mr. Suman Majumdar,
...for the Petitioner.

Mr. B. K. Roy,
Ms. Sima Biswas,
... for the State.

This application under Section 482 of the Code of Criminal Procedure challenges the proceeding being C.R. 607 of 2007 under Section 138 of the Negotiable Instruments Act pending before the learned Judicial Magistrate, 4th Court, Burdwan including order dated 22.1.2008.

Despite service of notice, none appears on behalf of the opposite party No. 2.

Drawing my attention to the cause title of the petition of complaint, Mr. Ayan Bhattacharya, learned counsel appearing for the petitioner submits that admittedly the accused Mohan Dhir @ Mon Kohan Dhir @ M. M. Dhir is a resident of A.T. Road, P.O. and P.S. Jorhat, Assam, beyond the territorial jurisdiction of learned 4th Court of Judicial Magistrate, Burdwan. However, without taking into consideration, the statutory mandate as laid down under Section 202 of the Cr. P.C., learned Trial Court issued process upon the accused person.

“Section 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, (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;

(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.”

It is trite to say that when statute mandates that a matter should be dealt with in a particular manner, it should be done in that manner only and not otherwise.

Since there is infraction of the statutory provision, I am inclined to set aside the order impugned and direct learned Trial Court to comply with the provision of Section 202 Cr.P.C. and proceed with the case according to law.

The revisional application being CRR 3405 of 2008 stands disposed of.

Copy of the order be sent to learned Trial Court for information and necessary compliance.

(Siddhartha Roy Chowdhury J.)