

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 4240 of 2013
With
CRAN 4 of 2017 (Old CRAN 3719 of 2017)**

**Bikas Das & Ors.
Vs
State of West Bengal & Anr.**

For the Petitioners : Mr. Satadru Lahiri

For the Opposite Party : Mr. N.P. Agarwal
Mr. Pratick Bose

Heard on : 27.02.2023, 03.08.2023.

Judgment on : 08.08.2023.

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is filed by the petitioners seeking quashing of the proceeding being C.R. Case No. 106 of 2013 under Sections 406/420/468/109 of the Indian Penal Code, 1860 as also the orders passed therein in connection with the said proceeding, pending before the Learned Additional Chief Judicial Magistrate, Gangarampur, South Dinajpur.
2. The revisional application filed by the petitioners precisely stated them to be the permanent residents of Belda, Sabuj Pally, P.O.-Belda, P.S.-Belda, District- Paschim Medinipur which was beyond the jurisdiction of Learned ACJM, Gangarampur, South Dinajpur.

3. On the basis of a complaint filed opposite party no. 2 under Section 200 of the Criminal Procedure Code before the Learned A.C.J.M., Gangarampur, South Dinajpur, C.R. Case No. 106/2013 was initiated against the petitioners for commission of offences punishable under Sections 406/420/468/471/109 of the Indian Penal Code, 1860.
4. It was further contended that the mother of the petitioner no.1 filed a complaint before the Belda Police Station accusing the opposite party no. 2 to have kidnapped and wrongfully restrained petitioner no. 1 who went missing since 3rd April, 2013. On 4th April, 2013 at 11 PM the mother of the petitioner no. 1 stated to have received a phone call from the petitioner no. 1 narrating of having been kidnapped and wrongfully restrained further stating that the opposite party demanded a sum of Rs. 36 lakhs as ransom by 5th April, 2013. Based on such complaint Belda Police Station Case No. 82/13 dated 5.4.2013 was registered under Sections 363/365/364A of the Indian Penal Code. The statement of the mother of the petitioner no. 1 was recorded under Section 164 of Cr.P.C, 1973.
5. It was further stated that the opposite party no. 2 suppressed the incident of kidnapping of petitioner no. 1 for illegal gratification and filed the instant case as a counter blast falsely implicating all the petitioners.
6. The opposite party no. 2 lodged a complaint stating that the accused/petitioner no. 1 representing himself as “Administer Finance Secretary of Krishi Bikash Shilpa Kendra,” established an office at the house of one Dijen Burman of Kaldighi, under Gangarampur Police Station. The accused persons being aided and abetted by each other further represented that Krishi Bikash Shilpa Kendra would recruit people in

casual posts and they would also provide them jobs under the Central Government. The complainant further stated on or about 18th March, 2010, the accused persons took a sum of Rs.3,00,000/- from him on such promise and also collected Rs.1,50,00,000/- from 50 other persons in the similar manner. The accused persons further issued appointment letters in favour of certain persons which on subsequent clarification from the concerned office, were revealed to be forged. On being confronted the accused persons promised to return the money but ultimately delayed and/or denied to return the same on one pretext or the other.

7. The Additional Chief Judicial Magistrate Gangarampur, South Dinajpur, took cognizance of the aforesaid complaint submitted by the opposite party no. 2 on 30th May, 2013 and subsequently exercising the power under Section 200 of Cr.P.C. upon examining the opposite party no. 2 under Section 200 of Cr.P.C. issued process against the petitioners under Sections 420/406/468/109 of the Indian Penal Code.
8. Section 200 of the Cr.P.C. states as follows:-

“ Examination of complainant. *A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-*

(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if

the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them.

9. Section 202 of the Cr.P.C. states as follows:-

“ 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.”

10. In the case of **Shivjee Singh vs Nagendra Tiwary and others**¹ the Supreme Court observed as follows :

“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 Sessions; 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 witness 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*

¹ CRIMINAL APPEAL NO. 1158 OF 2010
 (Arising out of SLP (Crl.) No. 1416 of 2009)

an officer in charge of a police station except the power to arrest without warrant.

....

...Section 202(1) empowers the Magistrate to 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 which he thinks fit for the purpose of deciding whether or not there exists sufficient ground for proceeding. By Amending Act No.25 of 2005, the postponement of the issue of process has been made mandatory where the accused is residing in an area beyond the territorial jurisdiction of the concerned Magistrate. Proviso to Section 202(1) lays down that direction for investigation shall not be made where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions or where the complaint has not been made by a Court unless the complainant and the witnesses have been examined on oath under Section 200. Under Section 202(2), the Magistrate making an inquiry under sub-section (1) can take evidence of the witnesses on oath. If the Magistrate thinks that the offence complained of is triable exclusively by the Court of Sessions then in terms of proviso to Section 202, he is required to call upon the complainant to produce all his witnesses and examine them on oath.”

11. In the case of **Abhijit Pawar vs Hemant Madhukar Nimbalkar and Another**² the Supreme Court observed as follows :

“16. ...the object of amendment of Section 202 Cr.P.C. is stated to be to avoid harassment or unnecessary inconvenience to the innocent persons. However, according to him such alleged harassment is

² (2017) 3 Supreme Court Cases 528

neither a hypothetical situation, nor it is mere legal submission. If the accused person feels harassment by an order of issuance of process then it is expected that he would complain against such unjust harassment without any delay and in any case at the first opportunity. It was so held in Rosy and Anr. Vs. State of Kerala. Therefore, the High Court was fully justified in rejecting the contention as regards amendment of Section 202 Cr.P.C. being an afterthought.

17.... in the case of Chandradev Singh Vs. Prakash Chandra Bose³ wherein it was held that the object of inquiry as contemplated in Section 202, Cr.P.C. is to ascertain the truth or falsehood. The Magistrate making the inquiry has to do this only with reference to the intrinsic quality of the statements made before him and the inquiry which would naturally mean the complaint itself, the statement on oath made by the complainant, and the statements made before him by persons examined at the instance of the complaint.

....

24... Vijay Dhanuka Vs. Najima Mamtaj in the following words: (SCC p. 644, paras 11-12)

“11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his

³ AIR 1963 SC 1430 : (1963) 2 Cri LJ 397

jurisdiction” were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

‘False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.’

The use of the expression “shall” prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word “shall” is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word “shall” in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression “shall” and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.”

25. For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment *Mehmood Ul Rehman Vs. Khazir Mohammad Tunda*⁴ in the following words: (SCC pp. 429-30, paras 20 & 22)

“20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in *Pepsi Foods Ltd. v. Judicial Magistrate*⁵, to set in motion the process of criminal law against a person is a serious matter.

22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence,

⁴ (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124

⁵ (1998) 5 SCC 749 : 1998 (Cri) 1400

and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

26. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of 'enquiry' is needed under this provision has also been

*explained in Vijay Dhanuka case⁶, which is reproduced hereunder:
(SCC p. 645, para 14)*

“14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:

2. (g) ‘inquiry’ means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.”

12. In **National Bank of Oman v. Barakara Abdul Aziz And Anr.**⁷, the

Hon’ble Supreme Court observed as follows:

“8. We find no error in the view taken by the High Court that the CJM, Ahmednagar had not carried out any enquiry or ordered investigation as contemplated under Section 202 Cr.P.C. before issuing the process, considering the fact that the respondent is a resident of District Dakshin Kannada, which does not fall within the jurisdiction of the CJM, Ahmednagar. It was, therefore, incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 Cr.P.C. before issuing the process.

⁶ Vijay Dhanuka v. Najima Mamta, (2014) 14 SCC 638

⁷ (2013) 2 SCC 488

9. The duty of a Magistrate receiving a complaint is set out in Section 202 Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 Cr.P.C. is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

10. Section 202 Cr.P.C. was amended by the Code of Criminal Procedure (Amendment) Act, 2005 and the following words were inserted:

“and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction.”

The notes on clauses for the abovementioned amendment read as follows:

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.”

The amendment has come into force w.e.f. 23-6-2006 vide Notification No. S.O. 923(E) date 21-6-2006.

11. We are of the view that the High Court has correctly held that the abovementioned amendment was not noticed by the CJM, Ahmednagar. The CJM had failed to carry out any enquiry or order investigation as contemplated under the amended Section 202 Cr.P.C. Since it is an admitted fact that the accused is residing outside the jurisdiction of the CJM, Ahmednagar, we find no error in the view taken by the High Court.

12. All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 Cr.P.C. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached by the High Court that the bare allegations of cheating do not make out a case against the accused for issuance of process under Section 418 or 420 I.P.C. The CJM will pass fresh orders after complying with the procedure laid down in Section 202 Cr.P.C., within two months from the date of receipt of this order.”

13. The order sheet of the Court of Additional Chief Judicial Magistrate, Gangarampur dated 26.04.2013 states as follows:

“C.R. CASE NO. 106/2013

Bipul Kr. Sarkar **Versus** *Bikash Das and 04 others.*

Order No. 01 Dated : 26/04/13

A Petition of complaint is filed by shri Bipul Kr. Sarkar alleging of offences punishable U/S 420/406/468/109 of I.P.C. against shri Bikash Das and 05 others praying for justice.

Perused the petition. Considered.

The cognizance of complaint is taken.

To 30/05/13 for initial Deposition.”

“Order No. 2 Dated 30.05.2013

Complt is present by filing hajira. Today is fixed for initial deposition. Complt Bipul Kr. Sarkar is examined on S.A under Section 200 Cr.P.C. Considering the complaint and evidence on S.A. and finding materials u/s 420/406/468/109 of I.P.C. in this stage.

Issue summons u/s 200 Cr.P.C. against the accused persons.

To 30/07/2013 for approve and S.A.”

14. The complaint being C.R. Case No. 106/2013 conspicuously mentioned the address of the accused petitioners to be of West Medinipur and North 24 Parganas which are evidently beyond the jurisdiction of the Learned Trial Court.
15. The Magistrate mechanically without applying judicious and empirical discretion and reasoning passed the impugned order non-complying the provisions mandatorily stipulated under Section 202 of the Cr.P.C. No enquiry either through the Court itself or an investigation through the police officer was directed prior to the issuance of summons or process to the impediment and detriment of the petitioners as well as contravention of the statutory provisions.
16. Section 202 (1) empowers the Magistrate to defer the issuance 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 whichever mode and manner he deemed appropriate in order to determine any sufficient ground to proceed with in deciding the case. The Amending Act No. 25 of 2005 directed mandatory postponement of issuance of process where the accused resided beyond the territorial jurisdiction of the concerned Magistrate.
17. The concerned Magistrate is directed to comply the provisions mandated under Section 202 of the Cr.P.C. through proper inquiry to be conducted as the accused petitioners resided beyond the territorial jurisdiction of the Ld. Magistrate and pass orders.
18. The order no.1 dated 26/04/2013 and order no.2 dated 30.05.2013 are set aside.

19. The revisional application is allowed in part.
20. Accordingly, the instant criminal revisional application along with connected application stand disposed of.
21. There is no order as to cost.
22. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
23. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)