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07.08
2024
Ct. No. 237

C.R.R. 1622 of 2015
Branch Manager, ICICI Bank Limited
Vs.
Sri Bablu Roy & Anr.

Mr. Soumya Nag
Mr. Karan Prasad
Ms. Rupal Singh
Mr. Ashok Kumar Singh

...For the Petitioner

Mr. Kamalesh Chandra Saha
Mr. M. Saha
Ms. Payel Mitra
Mr. Pranab Roy

...For the Opposite Party

This is an application where the petitioner has prayed for quashing of all proceeding pertaining to Case No. C-926 of 2014 presently pending before the Judicial Magistrate 1st Court Barasat.

It is submitted that the complainant/opposite party No. 2 filed an application under Section 156(3) of the Code of Criminal Procedure with a prayer for sending the same to the Officer-in-Charge of the local Police Station to direct investigation treating the petition of complaint as FIR.

Learned Chief Judicial Magistrate by his first order dated 6th May, 2014 though did not make any observation that he has reason to convert such application into an application for examination of complaint under Section 200 of the Cr.P.C. but from the said order it can be taken that the Magistrate has in fact converted the application under Section 156(3) of the Cr.P.C. into a complaint to Magistrate for examination of complaint under Section 200 of the Cr.P.C. and thereafter he took cognizance under Section 415, 417 and 420 of the

Indian Penal Code. He then transferred the case to the learned Judicial Magistrate, 1st Court, Barasat for disposal.

Thereafter it appears that by the impugned order dated 27th August, 2014 the transferee Magistrate had recorded initial deposition under Section 200 of the Cr.P.C. and thereafter he recorded that the complainant has able to make out a prima facie case of committing offence under Section 138 of the Negotiable Instruments Act against the accused persons and he had taken cognizance again under section 138 of N.I. Act. Needless to mention that the cognizance is taken of the offence and not against the offender and as such the cognizance taken by the transferee Magistrate second time upon self same offence under Section 138 of the N.I. Act is not permissible, when the filing Court has already taken cognizance of the offence under Section 415, 417 and 420 of the Indian Penal Code.

Furthermore, on perusal of the written complaint annexed with the application I do not find that any allegation has been leveled against the petitioner/accused person for committing offence under Section 138 of the N.I. Act.

Before going into the merit of the matter I find that there is a basic aspect of the matter which is very much shocking as appearing from the face of the order. I find that entire order about issuance of process under section 204 of Cr.P.C. has been passed blindly in a mechanical way. The entire complain does not bear a single word

alleging commission of any offence under section 138 of the Negotiable Instrument Act. It is unfortunate that a judicial officer without applying mind far from judicial mind using judicial process blindly which resulted as an instrument of oppression and harassment. How a judicial officer acts as post office without indicating anything in the order as to what prompted him to take cognizance and issue process under section 138 of the N.I. Act asking the petitioner to face trial, is really not digestible. On a bare reading of the complaint there is absolutely no material in support of the allegations justifying commission of offence under section 138 of N.I. Act.

A Magistrate before taking cognizance of an offence and before issuance of process must satisfy himself that there are sufficient grounds for proceeding. In fact the impugned order dated 27.08.2014 in that view of the matter is no order at all and the defect in issuing process by the said order goes to the very root of the matter and as such the order impugned dated 27.08.2014 is liable to be quashed.

In such view of the matter, the order dated 27th August, 2014 is hereby set aside.

Court below is directed to take initial deposition of the complainants' witnesses afresh and thereafter to come to a finding to take next steps either under chapter XV or Chapter XVI of Cr.P.C.

The application, being C.R.R. 1622 of 2015 along with the connected application, being IA No. CRAN 2 of 2024 are accordingly

disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)