

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

CRR 1933 of 2018

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IA CRAN 5 of 2020(Old No. CRAN 620 of 2020)

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CRAN 6 of 2020(Old No. CRAN 1327 of 2020)

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CRAN 11 of 2022

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CRAN 12 of 2023

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CRAN 13 of 2023

+

CRAN 14 of 2023

Srinjoy Bose

Vs.

State of West Bengal & Ors.

With

CRR 1523 of 2018

+

IA No. CRAN 9 of 2022

+

CRAN 10 of 2022

Suman Chattopadhyay

Vs.

State of West Bengal & Ors

For the Petitioner in

CRR 1933 of 2018

**: Mr. Sandipan Ganguly, Adv.,
Mr. Dipanjan Dutta, Adv.,
Mr. Surajit Saha, Adv.,
Mr. Ramanuj Roy Choudhury Adv.**

For the Petitioner in

CRR 1523 of 2018

**: Mr. Ayan Bhattacharjee, Adv.
Mr. Md. Zohaib Rauf, Adv.**

For the respondents

**: Mr. Shiv Shankar Banerjee, Adv.,
Mr. Somnath Mukherjee Adv.,**

Heard on

: 19.06.2024

Judgment on

: 29.07.2024

Subhendu Samanta, J.

1. These are two applications u/s 482 of the Code of Criminal Procedure 1973 for quashing a proceeding being AC Case No. 4115 of 2017 u/s 500/501/228A of IPC 1960 pending before Learned Additional Chief Judicial Magistrate, South 24 Parganas, Alipure.

2. Brief fact of the case is that on 15th December 2017, a complaint was filed by the opposite party No. 2 and 3 alleging commission of offence punishable u/s 500/501/228 of IPC against 04 accused persons. All of them are the media houses. Amongst them two accused persons filed these separate two criminal revisions for quashing the said complaint.

3. The brief fact of the complaint in a nutshell is that complainant No. 1 is renounced Surgeon Doctor, under the field of ENT and has earned good reputation in the locality after serving the community for more than 30 years. It is further case of the petitioner that he was involved with several reputed organisations and hospitals and earned good reputation from all concern. He also engaged in different social welfare activities. The Marriage between the complainant and his wife was solemnised on 27.02.1992 as per Hindu Rites and Customs. Out wedlock two female children were born on 03.10.1993 and 02.06.1995 respectively.

The complainant No. 2, elder daughter of complainant No 1, is also medical student perusing dental surgery course in a Medical College. She married with an engineer and her matrimonial family also had a good reputation. It is the further case of the complainant that his wife is suffering severe mental illness namely, schizophrenia (paranoid) for which she was admitted to various psychiatric hospital, nursing homes at different times. The younger daughter of the complainant No. 1 was also affected by her mother's illness and is also suffering from mental illness namely delusional disorder.... for which she was also admitted different psychiatric hospitals.

4. The illness of the wife of the complaint was so serious that she used to run away from the house frequently, for that reason, the petitioner also filed several missing diary of the nearest PS. It is the further case of the complainant's that in the month of September, 2011; while his wife was still away from home, she lodged complaint u/s-498A IPC against the complainant with P.S. Mahestala, under the influence of her mother with false allegation of physical and mental torture by the complainant.

5. In the year 2012, the wife of the complainant become more violent and aggressive and with the instigation of her mother, she filed an application u/s 227/ u/s 20.. of Indian Mental Health Act, 1987 before the Learned CJM, Alipur seeking necessary treatment of the wife of the complaint. It is

the further case of the complainant that the wife of the complaint had given married to the first daughter while she was studying MBBS without the consent and permission of complainant. The younger daughter was also suffered the mental illness for which she was admitted in different hospital and treated there. However, the younger daughter was also admitted in a Medical College for her study and she had been admitted at the hostel.

6. In the 1st week of December, 2014. Both the younger daughter and the wife of the complainant fled away from their respective places and were not found on thorough search. Consequently the complainant filed the missing diary at Maheshtala Police Station. Suddenly on 18.12.2014 the wife and the younger daughter of the complainant accompanied by their counsel went to Maheshtala PS along with News Channel 24 Ghanta and filed complaint of sexual assault, molestation and attempt to commit rape against the present complainant. Accordingly the Mahestala Police Station registered Case bearing No. 1016 dated 18.12.2014 u/s 376/511/354A/354B/323 IPC

7. It is the further case of the complainant that, on the same day (18.12.2014), the “24 GHANTA” news channel telecasted the whole episode of making complaint by the younger daughter, where she alleged that her father (complainant) had molested her and her elder sister

(complainant no. 2). On the same day the elder daughter (complainant no.2) rushed to Maheshtala P.S. and filed her statement denying all allegations in the complaint against her father.

8. On the next day, i.e. on 19.12.2014, the present petitioners and other accused persons published a colourable flash report in their news paper with crispy captions. The article published in the daily newspaper is being circulated in the locality of the complainant.

9. It is the positive case of the complainant that, by such alleged publication, the accused persons have disclosed the names, identity, address, profession, place of work and study course of the alleged victims as well as the present complainants.

10. It is the further case of the complainant that the accused media houses through their indecent and scandalous publication has seriously infringed the reputations of the complainants and lowered their moral and intellectual character to public. On the above ground, the complainant lodged a complaint case before the magistrate concern u/s 500(ii)/501(b) u/s 228A of IPC.

11. After receiving the complainant both the complainant were examined on SA, u/s 200 Cr.P.C.

Learned Magistrate after perusing the statements of complainants on SA, has issued process against the accused/

petitions u/s 500,501 and 228A of IPC. Hence these Criminal Revisions for quashing the complaint case.

12. The petitioners challenged the impugned complaint case and prayed for quashing the same along with the orders of issuing process by the concern Magistrate. The grounds for challenge the said criminal proceeding are as follows:-

a) No offence u/s 500/501 of the IPC has been made out in the petition of complaint.

b) No offence u/s 228A of the IPC has been made out in the petition of complaint.

c) The petitioners being the editor of media house are covered under the principle of “Right of Press” as guaranteed under Article 19(1) (a) of Constitution of India.

d) Learned Magistrate had issued process against the petitioners without complying the provision u/s 202 of Cr.P.C.

13. Petitioners as well as the private op as advanced a considerable argument on the above mentioned points and has also produced the written notes of argument along with the relevant citations of Hon’ble Supreme Court attaching the merit of this matter.

14. Before entering into the merit of the authorities the instant criminal revisions it appears to me that this revisional court is required to deal with the point raised by the petitioner that— Whether Learned Magistrate had issued the process

without complying with the provision of Section 202 of the Cr.P.C.

15. It further appears to me that without dealing with this issued if this court entered into the merits of the quashing petitions that would be tantamount to be a futile exercise.

16. **Point No. (d)** --- Learned Advocate for the petitioners submits that it would appear from the impugned complaint that the accused persons arraigned therein are residing at a place which follow outside the jurisdiction of the Learned ACJM concern. Thus, the enquiry u/s 202 of the Cr.P.C. and postponement of the issuance of process is mandatory and cannot be dispensed with. Learned Advocate for the petitioners further argument in the present case from the order of February 28, 2018, it would be evident that no additional witness was examined by the Learned ACJM concern. It would further evident that no additional inquiry as envisaged u/s 202 of the Cr.P.C. was conducted. Learned Counsel for the petitioner further argued that it is trite law that non-conducting an enquiry u/s 202 is a jurisdictional error. The same strike at root of the matter, they argued that therefore, the order dated February 28,2018 issuing process and the subsequent proceeding arising therefrom are bad in law and the proceeding is required to be quashed.

17. In support of their contention the Learned Counsel for the petitioner has cited decisions of Hon'ble Apex Court in

Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and Anr., (2017) 3 SCC 528 and National Bank of Oman Vs. Barakar Abdul Aziz and Anr. (2013) 2 SCC 488.

18. Refuting the argument of the petitioner, Learned Counsel appearing on behalf of the private respondent No. 2 and 3 submits that inquiry u/s 202 of Cr.P.C is not required in this particular case. The address of the present petitioner appears in the revisional applications disclosed that the petition being the editor of the accused media house are residing within the jurisdiction of the concern Magistrate though it is not required for the Magistrate to conduct enquiry u/s 202 Cr.P.C.

19. Learned Counsel further argued that before issuance of process the Learned Magistrate has himself examined the complainant on solemn affirmation conduction inquiry before issuance of process. Thus, they are could not be any error in the order. Learned Counsel for the OP No. 2 and 3 further argued that in the cited judgments of the Hon'ble Supreme Court in **Abhijit Pawar (supra)** and **National Bank of Oman** The Hon'ble Supreme Court has not quashed the criminal proceeding but remitted back the matter to the Learned magistrate to pass a fresh order.

20. On the above score he argued that the instant criminal proceeding cannot be quashed on that ground. Heard Learned Advocate. Perused the observation of Hon'ble Apex

Court in **Abhijit Pawar (Supra)** wherein the Hon'ble Supreme Court has categorised the required "inquiry" u/s 202 of the Code as follows:

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 case 10, 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."

27. When we peruse the summoning order, we find that it does not reflect any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of the complainant and after perusing the copies of documents filed on record i.e. FIR translation of the complaint, affidavit of advocate who had

translated the FIR into English, etc. the operative portion reads as under:

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 502 read with Section 34 of the Penal Code. Hence, issue process against the accused for the above offences returnable on 23-12-2009. Case be registered as summary case."

28. Insofar as these two accused persons are concerned, there is no enquiry of the nature enumerated in Section 202 CrPC.

21. Before entering into the required formalities of the Code, it is necessary to set out Section 202 of the Cr.PC.

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:

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.

22. Section 202 Cr.P.C. was amended in the year 2005 by the Code of Criminal Procedure (amendment) act, 2005, with effect from 22.06.2006 by adding words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction”. There is a vital purpose or objective behind the amendment, namely, to word off false complains against such persons residing off far of place with save them from unnecessary harassment. Thus, in those cases where the accused is residing at a place beyond the area in which the Magistrate exercise his jurisdiction, it is mandatory on the part of the Magistrate to conduct an inquiry by himself or direct investigation before issuing the process, so that false complaints are filtered and rejected.

23. Let me consider whether in this case, the Magistrate had actually conducted any enquiry by himself before issuing process. Perused the order passed by the Learned Magistrate concern on 28.02.2018. In the impugned order, concern magistrate has perused the petition of complaint connected documents and the alleged publication. He also perused the

examination by the complaint No. 1 and complainant No. 2 recorded u/s 200 on SA and satisfied himself to issue process against the present petitioner u/s 500/501/228A. Accordingly issued process. No witness were examined nor the impugned order disclosed that the Magistrate had committed any enquiry as envisaged u/s 202 Cr.P.C. according to the guideline has formulated by the Hon'ble Apex Court in **Abhijit Pawar (Supra)**.

During the issuance of process, he had no scope to aware about another address of the accused person. Address of the present witness in the petition of complaint admittedly outside the jurisdiction of Learned Magistrate concern. Thus, he must have to conduct an inquiry u/s 202 Cr.P.C. before issuing process.

24. Considering the above observation it appears to me that the Learned magistrate has issued the process against the present petitioner without complying with the mandatory formalities envisaged u/s 202 of Cr.PC.

25. Under the observations the impugned order dated 28.02.2018 appears to me illegal and the same is set aside.

26. The instant matter be remitted back to the Learned Magistrate with a direction to conduct mandatory enquiry as envisaged u/s 202 Cr.PC following the guideline of the Hon'ble Apex Court in **Abhijit Pawar Vs. Hemant Madhukar Nimbalkar (supra)**, after such inquiry, if it is found to be

justified, the concern Magistrate made issue process according to the law.

27. Other grounds quashing left open.

28. Under the above observation, both the criminal revisions are disposed of.

29. CRR is disposed of. Connected CRAN Applications if pending, are also disposed of.

30. LCR be sent down immediately, if at all received.

31. Any order of stay passed by this court during the pendency of the instant criminal revisions is also vacated.

32. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)