IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2980 of 2011
With
CRAN 5/2022

Rabindra Narayan Roy
-Vs-
The State of West Bengal and Anr.

For the Petitioner	: Mr. Milon Mukherjee Mr. Soumya Nag Mr. Dibyendu Raha Mr. Ram Nath Dutta
For the O.P. No. 2	: Mr. Avinash Kankani Mr. Suman Majumdar
For the State	: Mr. Pratick Bose
Heard on	: 10.01.2024, 07.02.2024, 21.03.2024, 03.04.2024, 19.08.2024
Judgment on	: 09.12.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner praying for quashing of the proceedings being Case No. C/17658 of 2010 pending before the Learned Metropolitan Magistrate, 10th Court, Calcutta under Section 233 of the Companies Act, 1956 and all orders passed therein including the orders dated 03.06.2010 and 09.06.2010 thereby taking cognizance and issuing process against the petitioner in connection with the aforesaid case.

2. The petitioner had been the Managing Partner of a firm of Chartered Accountants, viz. M/s Ray and Ray, Chartered Accountants, located at 6, Church Lane, Kolkata 700001 (hereinafter referred to as the "said firm").
3. The aforesaid firm audited the accounts of a company viz. M/s EIH Limited (hereinafter referred to as the "said company") preparing the audit reports in respect of the books of accounts.
4. The petitioner was served with a Show Cause Notice dated 23.01.2009 in respect of violations of the provisions of Sections 227(2) and 227(4A) of the Companies Act.
5. The petitioner replied to the said Show Cause Notice on 24.02.2009.
6. The Joint Director attached to the office of the Regional Director, Eastern Region, Ministry of Corporate Affairs further lodged a complaint against the petitioner at Institute of Chartered Accountants of India, New Delhi.
7. The Opposite Party No.2 during the pendency of the adjudication of the aforesaid complaint before the Institute of Chartered Accountants of India filed the complaint before the Learned Chief Metropolitan Magistrate, Calcutta on 03.06.2010 alleging commission of an offence punishable under Section 233 of the Companies Act, 1956 against the petitioner being Case No.C/17656 of 2010, whereby vide order dated 3.6.2010 process was issued against the petitioner.
8. On 09.06.2010, the Learned Metropolitan Magistrate, 10th Court, Calcutta subsequently issued process against the petitioner under Section 233 of the Companies Act, 1956.

9. The Learned Advocate representing the petitioner submitted as follows:-

   i. The Learned Magistrate while issuing process failed to appreciate that before filing the impugned petition of complaint, the Opposite Party no.2 did not deal with the exhaustive explanations given in respect of the show cause notice issued by the Opposite Party no.2. Furthermore, the Opposite Party No.2 did not wait for the outcome of the adjudication being carried out by the Disciplinary Committee of the Institute of Chartered Accountants of India, wherein, ultimately, a clean chit was given to the petitioner.

   ii. The explanations to the show cause notice, as aforesaid, clearly indicated there was no violation of the provisions of the Companies Act, 1956, which was further fortified from the decision of the Disciplinary Committee of the Institute of Chartered Accountants of India and as such there was no foundation of initiation of the impugned criminal proceedings against the present petitioner.

   iii. The Learned Magistrate was required to carefully scrutinize the evidence brought on record and may even himself could have put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence was prima facie committed or not. The Learned Magistrate in the instant case did not seek recourse to such safeguard in terms of the law laid down by the Hon'ble Apex Court while dealing with the impugned petition of complaint and in a mechanical manner issued process against the petitioner by the impugned orders thereby occasioning a travesty of justice.

iv. The Opposite Party no.2 in the impugned petition of complaint failed and/or neglected to even deal with the reply furnished by the petitioner in respect of the purported show cause notice. No reasons were either given to the said firm for not finding the same to be satisfactory, neither was it pleaded in the impugned petition of complaint as to why the Opposite Party no.2 felt that such replies given by the said firm were not found to be satisfactory, thereby necessitating the initiation of the impugned proceedings, particularly in a backdrop where the Disciplinary Committee of the Institute of Chartered Accountants of India was adjudicating the complaint lodged by the Joint Director attached to the office of the Regional Director, Eastern Region, Ministry of Corporate Affairs. Failure to do so clearly exposed the hollowness in the impugned petition of complaint and rendered the same liable to be quashed and/or set aside.

10. Considered the rival submissions of the Learned Advocate representing the State.

11. Incidentally Regional Director, Eastern Region, Ministry of Corporate Affairs, Institute of Chartered Accountants of India being the Disciplinary Committee of the Institute of Chartered Accountants of India concluded that no case had been made out against the petitioner. The Disciplinary Committee of the

Institute of Chartered Accountants of India by a letter dated 04.08.2011 intimated the petitioner the decision of the Committee to conclusively culminate the proceedings.

12. The Assistant Director Inspection connected with the Office of the Regional Director, Eastern Region, conducted an inspection under Section 209A of the Companies Act, 1956 in the matter of M/s. EIH Ltd. in respect of books of accounts, statutory register, records, etc. and indicated certain violations relating to – (a) violation of Section 227(4A) of the Act read with Paragraph 4(iii)(a) of the CARO, 2003, (b) violation of Section 227(2) relating to Section 211(1) & (2) read with Schedule VI of the Act and vividly described the nature of the aforesaid violations in the communication being No.JD(Inspn)Cal/14/07/6693 dated 23rd January, 2009 addressed to the petitioner seeking for reply/explanation of the violations enumerated in the communication point wise.

13. The petitioner submitted an explanation to the points raised by the aforesaid office through a communication dated 24th February, 2009. The Indian Institute of Chartered Accountants of India on receiving a complaint from Shri B.L. Sinha, Joint Director, Ministry of Corporate Affairs, Kolkata against the petitioner under Section 21 of the Chartered Accountants Act, 1949 invoked the provisions of Rule 8(1)(a) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 forwarded a copy of the complaint dated 04th

May 2010 to the petitioner demanding a verified written statement from him in the form of reply within 21 days.

14. The petitioner submitted the explanation/reply sought from him answering the points raised in the aforesaid complaint subsequently on 10th May, 2010. Intermittently, the Assistant Registrar of Companies, West Bengal, instituted a complaint under Section 233 of the Companies Act, 1956 before the Code of the Learned Chief Metropolitan Magistrate Kolkata, inter alia, stating as follows:-

> *““.....The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view –*
>
> *i. in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and*
>
> *ii. in the case of the profit and loss account, of the profit or loss for its financial year.”*
>
> *5. That an inspection of the books of accounts and other records of the Company was carried out by an Inspecting Officer duly authorized by the Central Government under Section 209A of the Act.*
>
> *6. That the Inspecting Officer has observed and pointed out the contravention of the aforesaid provision of Section of the Act in the course*

of inspection which inter alia stated in the under mentioned show cause notice which runs hereunder:-

AND WHEREAS the books of accounts and all other relevant records of the company have been inspected under Section 209A of the Companies Act, 1956 by an Officer of the MCA, Govt. of India, Kolkata. The Inspecting Officer in the Inspection Report has pointed out the violation of Section 227(2) relating to Section 211(2) read with Schedule VI of the Companies Act, 1956. The nature of violation as pointed out in the said Report is given below:-

Violation of Section 227(2) relating to Section 211(2) read with Schedule VI of the Companies Act, 1956.

"From the common Schedule No.16 under the heading "Other Income" in the Profit & Loss Account, annexed to the Balance Sheets as at 31.03.2005 and 31.03.2006, it is noticed that the income from investments distinguishing between trade investments and other investments has not been disclosed, leading to violation of Section 211(2) read with Schedule VI of the Act which ought to have been qualified by the statutory auditors as required under 227(2) of the Act, which is lacking in the instant case resulting in a violation of the provisions of Section 227(2) of the Act."

And consequently, the accused rendered them-selves liable for punishment as provided under Section 233 of the Act.

7. That the show-cause notice no.ROC/17981//INSP/209A/1/322 to 323 dated 06.05.2010 was issued to the accused by the complainant by Speed Post.

8. That the above violation of the Act was come to the knowledge of the complainant on 19.04.2010 when he received a letter from the Regional Director, Eastern Region, Kolkata vide letter no.RD/T/2387/Inspn/282 *dated 19.04.2010 directing therein to launch the prosecution for the aforesaid violation against the accused and as such, the complainant has filed this instant case well within the period of limitation as provided under Section 468 and 469 of the Criminal Procedure Code, 1973."*

15. Subsequently, process was issued which had been impugned.

16. The Institute of Chartered Accountants of India vide a communication being Reference No.PR-74/10-DD/75/2010/NG dated 04th August, 2011 inter alia intimated the petitioner as follows:-

> *"Dear Sir,*
>
> *Sub:- In the matter of Complaint made by CA, B.L. Sinha, Joint Director o/o the Regional Director, Eastern Region, Kolkata, MCA against you under Section 21 of the Chartered Accountants Act, 1949 (as amended by the Chartered Accountants (Amendment) Act, 2006.*
>
> *I have been directed to inform you that the above Complaint, your Written Statement and Rejoinder of the Complainant along with the prima facie opinion formed by the Director (Discipline) under Rule 9(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007, were considered by the Disciplinary Committee. The Committee on a consideration of the same did not agree with the prima facie opinion of the Director (Discipline).*
>
> *In view of the above, the Disciplinary Committee decided to close the matter.*
>
> *Therefore, under Rule 9(2)(c), the Committee passed order for closure of the aforesaid Complaint.*
>
> *The above mentioned complaint thus stands closed."*

17. Section 211 of the Companies Act, 1956 states as follows:-

"211. Form and contents of balance sheet and profit and loss account.-

1. *Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading "Notes" at the end of that Part:*

   Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance sheet has been specified in or under the Act governing such class of company.]
2. *Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto:*

   Provided that nothing contained in this sub-section shall apply to any insurance or banking company [or any company engaged in the generation or supply of electricity] [Inserted by Act 65 of 1960, Section 62 (w.e.f. 28.12.1960).], or to any other class of company for which a form of profit and loss account has been specified in or under the Act governing such class of company.
3. *The Central Government may, by notification in the Official Gazette, exempt any class of companies from compliance with any of the requirements in Schedule VI if, in its opinion, it is necessary to grant the exemption in the [public interest] [Substituted by Act 65 of 1960, Section 62, for " national interest" (w.e.f. 28.12.1960).].Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.*

4. *Every profit and loss account and balance sheet of the company shall comply with the accounting standards.*

   (3B)Where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such company shall disclose in its profit and loss account and balance sheet, the following, namely:-

   (a)the deviation from the accounting standards;

   (b)the reasons for such deviation; and

   (c)the financial effect, if any, arising due to such deviation.

5. *(3C)For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210-A:Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under this sub-section.] [Inserted by Act 21 of 1999, Section 14 (w.r.e.f. 31.10.1998).]*

6. *The Central Government may, on the application, or with the consent of the Board of Directors of the company, by order, modify in relation to that company any of the requirements of this Act as to the matters to be stated in the company's balance sheet or profit and loss account for the purpose of adapting them to the circumstances of the company.*

7. *The balance sheet and the profit and loss account of a company shall not be treated as not disclosing a true and fair view of the state of affaris of the company, merely by reason of the fact that they do not disclose-*

(i)in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938);

(ii)in the case of a banking company, any matters which are not required to be disclosed by the Banking Companies Act, 1949 (10 of 1949);

(iii)in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by [both the Indian Electricity Act, 1910 (9 of 1910), and the Electricity (Supply) Act, 1948 (54 of 1948)] [Substituted by Act 65 of 1960, Section 62, for " the Electricity (Supply) Act, 1948 (54 of 1948)" (w.e.f. 28.12.1960).];

(iv)in the case of a company governed by any other special Act for the time being in force, any matters which are not required to be disclosed by that special Act; or

(v)in the case of any company, any matters which are not required to be disclosed by virtue of the provisions contained in Schedule VI or by virtue of a notification issued under sub-section (3) or an order issued under sub-section (4).

8. *For the purposes of this section, except where the context otherwise requires, any reference to a balance sheet or profit and loss account shall include any notes thereon or documents annexed thereto, giving information required by this Act, and allowed by this Act to be given in the form of such notes or documents.*
9. *If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [ten thousand rupees] [Substituted by Act*

53 of 2000, Section 98, for " one thousand rupees" (w.e.f. 13.12.2000).], or with both:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove [* *] [The words " that he had reasonable ground to believe and did believe" omitted by Act 65 of 1960, Section 62 (w.e.f. 28.12.1960).] that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements aforesaid were complied with and was in a position to discharge that duty:Provided further that no person shall be sentenced to imprisonment for any such offence, unless it was committed wilfully.*

10. If any person, not being a person referred to in sub-section (6) of section 209, having been charged by the [* *] [The words " managing agent, secretaries and treasurers" omitted by Act 53 of 2000, Section 98 (w.e.f. 13.12.2000).] [Managing Director or manager,] [Inserted by Act 65 of 1960, Section 62 (w.e.f. 28.12.1960).] or Board of Directors, as the case may be, with the duty of seeing that the provisions of this section and the other requirements aforesaid are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to [ten thousand rupees] [Substituted by Act 53 of 2000, Section 98, for " one thousand rupees" (w.e.f. 13.12.2000).], or with both:*

Provided that no person shall be sentenced to imprisonment for any such offence, unless it was committed wilfully."

18. Section 227 of the Companies Act, 1956 states as follows:-

"227. Powers and duties of auditors:-

1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, whether *kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as auditor.*

(1A)Without prejudice to the provisions of sub-section (1), the auditor shall inquire-

(a)whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members;

(b)where transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company;

(c)where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(d)whether loans and advances made by the company have been shown as deposits;

(e)whether personal expenses have been charged to revenue account;

(f)where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually

been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.]

2) *The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view-*

(i)in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(ii)in the case of the profit and loss account, of the profit or loss for its financial year.

3) *The auditor's report shall also state-*

4) *(a)whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;*

(b)whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;(bb)[whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by clause (c) of sub-section (3) of that section and how he has dealt with the same in preparing the auditor's report;] [Inserted by Act 65 of 1960, Section 69 (w.e.f. 28.12.1960).]

(c)whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns;

(d)[whether, in his opinion, the profit and loss account and balance sheet comply with the accounting standards referred to in sub-section (3-C) of section 211;] [Inserted by Act 21 of 1999, Section 16 (w.r.e.f. 31.10.1998).

(e)[in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company; [Inserted by Act 53 of 2000, Section 109 (w.e.f. 13.12.2000).]

(f)whether any Director is disqualified from being appointed as Director under clause (g) of sub-section (1) of section 274;]

(g)[whether the cess payable under section 441-A has been paid and if not, the details of amount of cess not so paid.] [Inserted by Act 11 of 2003, Section 28.]

5) *Where any of the matters referred to in clauses (i) and (ii) of sub-section (2) or in clauses (a), (b), [(bb)]* [Inserted by Act 65 of 1960, Section 69 (w.e.f. 28.12.1960).], *[(c) and (d)]* [Substituted by Act 21 of 1999, Section 16, for " and (c)" (w.r.e.f. 31.10.1998).] *of sub-section (3) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.*

6) *(4A)[The Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein:*

Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case.] [Inserted by Act 31 of 1965, Section 21 (w.e.f. 15.10.1965).]

7) *[The accounts of a company shall not be deemed as not having been, and the auditor's report shall not state that those accounts have not*

been, properly drawn up on the ground merely that the company has not disclosed certain matters if-(a)those matters are such as the company is not required to disclose by virtue of any provisions contained in this or any other Act, and

(b)those provisions are specified in the balance sheet and profit and loss account of the company.]"

19. Section 233 of the Companies Act, 1956 states as follows:-

"233. Penalty for non-compliance by auditor with sections 227 and 229

If any auditor's report is made, or any document of the company is signed or authenticated, otherwise than in conformity with the requirements of sections 227 and 229, the auditor concerned, and the person, if any, other than the auditor who signs the report or signs or authenticates the document, shall, if the default is wilful, be punishable with fine which may extend to [ten thousand rupees]."

20. In the case of ***Abhijit Pawar vs Hemant Madhukar Nimbalkar and Another***[1] the Supreme Court observed as follows :

> *"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 Tunda4 in the following words: (SCC pp. 429-30, paras 20 & 22)*
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> > *"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for*

[1] (2017) 3 Supreme Court Cases 528

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 Magistrate5, 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, 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."*

21. In ***Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.***[2], the following was held by the Hon'ble Supreme Court:-

"33. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to the accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , this Court held as under : (SCC p. 430, para 22)

22. … 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

[2] (2019) 16 SCC 610

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 36 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." (emphasis supplied)

Emphasis had been supplied that sufficient indication has to be borne in the order passed by the Learned Magistrate that he had considered the complaint, the statements recorded and the result of inquiry or the report or investigation under Section 202 of Cr.P.C."

22. The Learned Magistrate did not consider the facts and circumstances of the case to satisfy himself as to whether the alleged fact in the complaint would constitute an offence.

23. The observation of the Institute of Chartered Accountants of India whereby the complaint lodged against the petitioner was not proceeded with a closure of the same objectified a finality of the complaint in the affirmative in favour of the petitioner. Such observation of the Institute of Chartered Accountants of India was not challenged. Moreover, the complaint filed before the Learned Metropolitan Magistrate was filed within the time period as envisaged under Section 468 and 469 of the Code of Criminal Procedure. However, the averments in the complaint had been vague.
24. Moreover, the reply/explanation filed by the petitioner in terms of the objections raised by the opposite party no.2 appeared to be satisfactory without any deliberate attempt to conceal or enshroud any material information to frustrate the authenticity or legality of the report filed by the petitioner.
25. To allow to continue with the impugned proceedings would result in gross abuse of the process of law.
26. In view of the above discussions, the proceedings being Case No. C/17658 of 2010 pending before the Learned Metropolitan Magistrate, 10th Court, Calcutta under Section 233 of the Companies Act, 1956 and all orders passed therein including the orders dated 03.06.2010 and 09.06.2010 are quashed.
27. Under such facts and circumstances, the criminal revisional application being CRR 2980 of 2011 is allowed.

28. Accordingly, CRR 2980 of 2011 is disposed of. Connected application, if any, also stands disposed of.

29. There is no order as to costs.

30. 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.

31. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)