

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.**

C.R.R. No. – 3718 of 2017
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IA No. CRAN 19 of 2022
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CRAN 21 of 2022
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CRAN 22 of 2023
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CRAN 23 of 2023
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CRAN 24 of 2023
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CRAN 25 of 2023
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CRAN 26 of 2023
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CRAN 27 of 2023

IN THE MATTER OF

M/s. Blue Star Limited & Ors.
Vs.
State of West Bengal & Ors.

For the Petitioner : Mr. Krishnendu Bhattacharya, Adv.,
Mr. Avishek Guha, Adv.
Ms. Akansha Chopra, Adv.
Mr. Priyankar Ganguly Adv.

For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Imran Ali, Adv.,
Ms. Debjani Sahu Adv.

For the OP : Soham Dhara Adv.

Heard on : 25.01.2024

Judgment on : 07.02.2024

Subhendu Samanta, J.

1. This is an application u/s 482 of the Code of Criminal Procedure for quashing a proceeding being complaint case No. C-234 of 2017 pending before the Learned 2nd Court of Judicial Magistrate Asansol alleging offence u/s 420/120B of IPC and of order passed therein for sheer abused of process of law.

2. The brief fact of the case the present OP 2 has lodged a petition of complaint against the present petitioner before the Learned Chief Judicial magistrate, Asansol vide complaint case No. 234 of 2017 alleging offences punishable u/s 420/120B of IPC.

3. The address of the present petitioner was stated in the petition of complaint as- 7, Hare Street, Kolkata 700001. After receiving the petition of complaint the Learned Chief Judicial magistrate Asansol, transfer the same complaint case to the Learned 2nd Court of Chief Judicial Magistrate Asansol for disposal.

4. After receiving such petition of complaint by the Chief Judicial magistrate 2nd Court Asansol, Learned Magistrate examine the complainant on SA and after considering the evidence and materials on record on issued process against the present petitioner u/s 204 of the Code of Criminal procedure for offence punishable u/s 420/120B. Again such order of issuance of process and, on merit, the instant criminal revision has been filed for quashing.

5. Detailed argument was advanced by the Learned advocates for the parties.

6. Heard the Learned Advocates at length.

7. It appears that the Learned Magistrate had issued process on receiving the complaint against the present petition u/s 204 Cr.P.C. The address of the accused person was mentioned as, 7, Hare Street, Calcutta 700001. The accused persons/petitioners admittedly are not residing within the territorial jurisdiction of the Learned Magistrate concern.

8. It is a specific direction u/s 202 of the Code of Criminal Procedure that

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;

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

9. By virtue of the provision of Section 202 (1), where the accused person is residing at a place beyond the territorial jurisdiction of the Learned Magistrate, the magistrate must postpone issue of process, shall enquire into the case himself, or direct investigation to be made by a police officer or by other person as he thinks fit, for the purpose of deciding whether or not, there is a sufficient ground for proceeding.

10. In this case the Magistrate concern had directly issued the process without complying with the provision u/s 202 Cr.P.C. It further appears that only the complaint has been examined on SA. No other witnesses were examined. In the situation the Hon'ble Supreme Court has decide the same issue in--

1). Narmada Prasad Sankar Vs. Sardar Abtar Singh Chabra
reported in (2006) 9 SCC 601 as well as in

2) National Bank of Oman Vs. Barakara Abdul Aziz and Anr.

11. We are of the view that the High Court has correctly held that the above-mentioned amendment was not noticed by the C.J.M. Ahmednagar. The C.J.M. had failed to carry out any enquiry or ordered investigation as contemplated under the amended Section 202 of the Cr.P.C. Since it is an admitted fact that the accused is residing outside the jurisdiction of the C.J.M. 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 of the 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 of the I.P.C. The C.J.M. 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.

11. Having considered the ratio laid down by Hon'ble Apex Court in **National Bank Oman (supra)**, I am of a view that the instant criminal revision for quashing criminal proceeding cannot be entertained at this stage. The order for issuance of process against the present petitioner passed by the Learned Magistrate on 06.09.2017 is hereby set aside. The matter be remanded back to the Magistrate for passing fresh order after complying with the provision u/s 202 Cr.P.C. . I make it clear that the instant criminal revisional application for quashing and grounds thereby has not been dealt with by this court; all the points are kept open to be decided in subsequent stage according to the law.

11. Accordingly the instant criminal revision is disposed of on the above observation.

12. Let a copy of this order be served upon by the Learned Magistrate for necessary information and compliance.

13. CRR is disposed of. Connected CRAN applications are if pending, are also disposed of.

14. 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.)