

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 841 of 2022

**Rakesh Singhal @ Rakesh Kumar Singhal & Ors
Vs.
Truvolt Engineering Co. Pvt. Ltd.**

For the Petitioners : Ms. Somopriyo Chowdhury
Mr. Dipayan Dan

For the opposite party : Mr. Mrityunjoy Chatterjee
Ms. Suchismita Chakraborty
Mr. Debapriya Majumder

Heard on : 27.01.2025

Judgment on : 12.02.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. Mr. Chowdhury learned Counsel appearing on behalf of the petitioners submits that the petitioners are the directors of Adhunik Niriyat Ispat Ltd., which is engaged in selling electrical steel sheets. During the course of their continuous business relationship CRGO Steel Sheets and CRNO Sheet cuttings and other materials worth Rs.

98,91,729/- were supplied to the complainant /opposite party. He further alleged that since no payment was received in spite of invoices raised, a demand notice dated 21st May, 2019, calling for payment of the said outstanding amount along with interest was sent. The opposite party/complainant by a letter dated 4th June, 2019 denied their liability stating that a portion of CRGO Sheets and CRNO sheets were not upto the mark. The petitioners/ company by a letter dated 22nd June, 2019 replied that this issues were never raised at the time of supply or immediately after supply of the products and were raised subsequently as a matter of afterthought created after receiving the demand notice.

2. Thereafter proceeding under section 9 of the Insolvency and Bankruptcy Code 2016 was initiated by the petitioner company against the said company before National Company Law Tribunal, Kolkata being IB No. 1751/KB/2019 and the opposite party herein filed their reply in the said IBC proceeding claiming that the materials supplied were not upto the mark. On 16th August, 2021 on the request of the opposite party/complainant a settlement agreement was executed, in which the opposite party undertook to square off the entire outstanding of Rs. 98,91,729/- in ten monthly installments by ten post dated cheques against which petitioners company agreed to withdraw the said IBC Proceeding. Petitioners submits that in the said settlement agreement opposite party admitted that cargo coil was supplied to them by the petitioners company worth Rs. 98,91,729/- and they accepted the said liability and undertook to liquidated the said liability by the said post dated cheques and believing

the said representation made in the settlement agreement the IBC proceeding was dismissed as settled out of court.

3. Petitioners further submit that after the said settlement agreement out of ten post dated cheques, first five cheques were honoured but the other five cheques got dishonoured and for which proceeding under section 138 of the N.I. Act has been initiated which are pending for disposal.

4. It is alleged that during such happenings, the opposite parties filed the present complaint on 22nd April, 2021 to pre-empt the consequences of dishonour of the cheques and to quash petitioner's company so that they are stopped from initiating the proceeding under section 138 of the N.I. Act. Infact the impugned petition of complaint was filed suppressing the factum of settlement and the issuance of post-dated cheques by the complainant as well as the termination of the IBC Proceeding, on the ground of settlement. Petitioners further case is that the complainant/opposite party no.2 herein has repeated the self-same contention /allegations which it had made in the IBC Proceeding to circumvent their liability to pay the outstanding amount and therefore, the contents of the complaint is reproduction of the opposite party's reply in the IBC Proceeding, but the opposite party cleverly suppressed that they had waived their allegations and accepted their liability during pendency of the IBC Proceeding pursuant to which the settlement agreement was executed on 16th August, 2021 and the IBC Proceeding was withdrawn.

5. It appears from the order sheet that the impugned complaint was lodged before the trial court on 22.04.2021 by the opposite party/complainant and the court had taken cognizance of offences under section

420/506/120B/34 IPC on that date. Thereafter on the next date i.e. on 09.08.2021 the Trial Court after examining the complainant's witnesses under section 200 of Cr.P.C., observed that an enquiry by the police officer is necessary in respect of the said complaint and accordingly the Trial Court asked Officer-in charge (OC) Bowbazar P.S. to enquire into the matter and report under section 202 of Cr.P.C. Thereafter a report was submitted and considering the said report, the trial court issued process by a cryptic order dated 07.09.2021.

6. Before going to further details let me reproduce the impugned order dated 07.09.2021

“Order Dated: 07.09.2021

Complaint is present along with his Ld. Lawyer.

Today is fixed for report/ s.202 Cr.P.C.

Received a report u/s.202 of Cr.P.C. forwarded by O/C Bowbazar PS.

Perused the report, considered and find that there is prima facie a case u/s.34/120B/420/506 of I.P.C. against the accused person accordingly, the cognizance is taken.

Accordingly, let the process be issued u/s. 204(4) of Cr.P.C.

Complainant to file requisite at once.

BC-I to do needful.

Fix 12.01.2022 for S/R and appearance”

7. In this context two things are brought to my notice during the course of hearing. Firstly it appears from the order dated 9th August, 2021 that Ld. Metropolitan Magistrate, 7th court Calcutta had directed the officers-in-charge Bowbazar P.S. to conduct enquiry under section 202 of Cr.P.C., but it appears that the enquiry report was filed by a Sub-Inspector

of Police namely Subir Saha attached with Bowbazar P.S. and on the basis of said report process has been issued against the present petitioners. In this context learned Counsel for the petitioners strenuously argued that section 202 authorized the trial Magistrate in appropriate cases to postpone the issue of the process against the accused and either enquire 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 are sufficient ground for proceeding. In the present case the order dated 09.08.2021 clearly demonstrates that the Magistrate had asked the officer in charge of Bowbazar P.S. to make the inquiry under section 202 of the Cr.P.C. and as such OC Bowbazar P.S. cannot sub delegate such power to a sub inspector of police without taking permission from the court. Therefore, the person who has been directed by the magistrate to hold inquiry under section 202 cannot sub delegate his function to some other persons and if he does so the purpose of making direction for the inquiry under section 202 gets frustrated.

8. A co-ordinate bench of this court in ***Krishan Chandra Pal and others Vs. Md. Nantu Seikh and another in CRR 2815 of 1996*** (decided on June, 18th 1999) has clearly held that if such inquiry is done by a person who has not been asked by the Magistrate to do, the person so delegated acquires no jurisdiction to hold such inquiry and the Magistrate should not have looked into the result of such inquiry and the order issuing process on the basis of such inquiry report cannot be sustained. The relevant paragraph 10 of the said judgment may be reproduced below.

“Section 202(1) Cr.P.C. provides that the Magistrate may direct an investigation by any person as he thinks fit for the purpose of ascertaining whether there is sufficient ground for proceeding. Therefore, it is entirely for the Magistrate to decide the fitness of a person to hold an enquiry under section 202 Cr.P.C. But the person who has been directed by the learned Magistrate to hold such enquiry can not delegate his function to some other person and if he does so, the person so delegated acquires no jurisdiction to hold such enquiry. Therefore, in the instant case it must be held that the entrustment of the enquiry by the Officer-in-Charge of the P.S. was not within his competence, nor the Assistant Sub-Inspector of Police acquired any authority to hold the enquiry. In my considered opinion the learned Magistrate should not have looked into the result of such enquiry/investigation and the order issuing process on the basis of such inquiry report can not be sustained.

9. The other aspect of the matter is that from the petition of complaint it appears that the complainant M/s Truvolt Engineering Co. Pvt. Ltd. has made the allegation that the complainant/company is purchasing CRGO Electrical Steel Sheets from the accused person since 2017 and has never placed any order for CRNO Steel Sheets but the accused person without any purchase order, dumped more than 57 MT of said materials in the premises of complainant/company, valued around Rs. 49,19,000/-, which were of no use and could never be used by the complainant/company and were left over and ultimately treated as iron scraps as the accused persons refused to take back the materials. Further allegation is that the accused persons started exercising pressure tactics and use of force to forceably realize the amount against said non usable materials, which were never used by the complainant/company in the manufacture of transformer and that for imported toxic iron scrap sold and supplied by the accused person in the name of fresh CRGO Steel Sheets, the complainant company has suffered huge financial losses and thereby the complainant company is feeling gravely cheated.

10. Now on the basis of said averment and the initial deposition the ld. Court thought it necessary that an inquiry is required to be conducted

under section 202 of the Cr.P.C., and accordingly he made direction to OC Bowbaqzar P.S. to cause inquiry as stated above. I have stated above that the OC Bowbazar P.S. did not make enquiry but the person who made the enquiry has simply stated in his report dated 07.09.2021, which was forwarded by OC Bowbazar P.S., that during inquiry he contacted with the petitioner who has stated the same thing which has already been averred in the complaint. The relevant portion of the report may be reproduced below:-

"That the complainant's company has been purchasing CRGO Electrical Steel Sheets from the accused persons since 2017 but never placed the order for CRNO Steel Sheets to the accused person. Though they delivered huge quantity of CRNO Steel Sheets to the complainant and complainant company paid huge money to them But during 2017 and 2018 total 868 numbers of transformers failed & were returned from different company to the complainant for repairing and it could be noticed that all the transformers were failed /collapsed & returned back to the complainant due to poor quality of Electrical Steel Sheets and also could be learnt that the accused person imported waste Iron Scrap and sell those as fresh Electrical Steel Sheets. Against, for the failure of the 868 number of transformers within the warranty [period the complainant company has suffered huge financial losses of Rs. 3,07,00,000/- (Ruppess Three Crores Seven Lakhs Only) for repairing of the same. Further the complainant's company knocked the accused persons for several times for the said due money but they did not pay any amount. Complainant also sent him legal notice through he Advocate with stating whole fact but the accused persons became silent, and did not pay any amount to the complainant to till date.

11. On bare perusal of said report it clearly demonstrates that the concerned police officer in his report only recorded the statement of the complainant, which is the replica of the statement made by the complainant in his complaint. There is nothing in the inquiry report that there was at all any dishonest inducement to deliver property with guilty mind or deception of the complainant either by making false or misleading representation or by other action or omission to deliver any property, except the recording of complainant's statement as above. Accordingly it is

not at all clear as to what prompted the Magistrate to issue process on the basis of said report, when initially he felt it necessary to make inquiry on the basis of self same averments made in the complaint. Infact the order of issuance of process dated 7th September, 2021 is so cryptic that it hardly discloses that the Magistrate had at all any reason to believe that there are sufficient ground for proceeding.

12. It is true that while issuing process the Magistrate is not supposed to record detailed reasoning, but it must reflect that he has applied his judicial mind before issuing the process. He cannot play the role of a mere spectators in such circumstances.

13. In ***M/S Pepsi Foods ltd. & another Vs. Spl. Judicial Magistrate & others*** reported in **AIR 1998 SC 128** it was held by supreme Court as follows:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself 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 is prima facie committed by all or any of the accused.”

14. In such view of the matter I find that the report submitted by one Subir Saha, Sub-Inspector of Police Bowbazar P.S. itself is bad in law and on the basis of such report the magistrate concerned ought not to have decided to proceeded under section 204 of the Cr.P.C.

15. In such view of the matter, the order dated 7th September, 2021 and all subsequent orders are hereby quashed. The Magistrate concerned is hereby directed to ask OC, Bowbazar P.S. to make inquiry personally and to submit a report in compliance with his order dated 9th August 2021 and on the basis of said report along with the other materials in record, the Magistrate concerned will decide to proceed either under section 203 of Cr.P.C. or under section 204 of the Cr.P.C., at the earliest, without being influenced by any observation made herein.

16. CRR 841 of 2022 thus stands disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)