

11.12.2025

Sl. No.06.

D/L.

Mithun.

Ct.No.29.

CRR/4361/2024
with
IA No: CRAN 2 of 2025
Rajesh Kumar Sinha
Vs.
Ganesh Pramanik

Mr. Sandipan Ganguly, Sr. Adv.,
Mr. Avishek Guha,
Mr. Avik Ghatak,
Ms. Sonal Jaswal

...for the petitioner

Mr. Partha Chakraborty,
Mr. Jyotirmoy Bhattacharya,
Mr. Rishabh Dutta Guha,
Ms. Jayita Das

...for the opposite party

This is an application wherein petitioner has prayed for quashing the proceeding in connection with complaint case No.2352 of 2024, presently pending before learned Additional Chief Judicial Magistrate, Bidhannagar.

The opposite party herein preferred an application under Section 156(3) of Cr.P.C. and the allegation levelled inter alia to the effect that he is a co-owner as reflected in the record of Rights with regard to two plots being C.S. dag No. 6621 and 6476. Airport Authority has erected one office at the said plot and Rail Vikas Nigam Limited has also erected some pillars in connection with Metro Railway related work, despite the fact that said plots of land though acquired by government on previous occasion but thereafter had been de-acquired by virtue of judgment of this High Court on 15.7.1969 in CR 6387(w) 1968. The allegation of the petitioner herein includes procuring false documents, using false evidence and criminal conspiracy. Petitioner's contention is that there is

no evidence against it which can attract criminality. However the instant proceeding aimed at converting a civil dispute into a criminal proceeding.

On perusal of the order-sheet, it appears that the Trial Court by an order dated 5th June, 2024 converted the application filed under Section 156(3) of Code into a complaint. Thereafter, on the next date, i.e., 13.06.2024, the Court below took cognizance of the offence and he also examined the complainant and thereby came to a finding that before proceeding under Section 204 of the Cr.P.C., the allegation levelled in the complaint is required to be enquired under Section 202 of the Cr.P.C. to ascertain as to whether there is any sufficient ground for proceeding or not. Thereafter, he also came to a finding that since the complainant has no faith in the police, so the enquiry under Section 202 of the Cr.P.C. is required to be done by any Officer or person not directly in touch with the concerned department. Accordingly, he directed Treasury Officer, Bidhannagar to investigate the case under Section 202 of the Cr.P.C. by collecting suitable evidence and to submit a report positively by the next date.

However, on the next date, the Treasury Officer did not appear before the Court and thereby he directed Treasury Officer to appear personally on 28th June, 2024. On which date learned Court below expressed his anguish over the conduct of the Treasury Officer and decided that the enquiry under Section 202 of the Cr.P.C. can be done by the Court itself, as he has already observed that the complainant has no faith upon the police administration.

However, it appears from the subsequent orders that no such enquiry was done by the Court below under Section 202 either by himself or by any appropriate authority and all on a sudden on 31st July, 2024, without making any further observation as to his satisfaction about the

sufficient ground for proceeding, learned Court below issued process against all the accused including the present petitioner under section 204 Cr.P.C.

There is no quarrel with the proposition of law that section 204 of the code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. Section clearly states that if in the opinion of the Magistrate taking cognizance of an offence, there are sufficient ground for proceeding, then the summons may be issued under section 204. However said section mandates a Magistrate to form an opinion that there exists sufficient ground for summons to be issued.

In the instant case thought learned Magistrate in his earlier order held that the imputations in the complaint needs to be verified by making an inquiry under section 202 Cr.P.C. but in the order issuing summons to the petitions herein, court below failed to record his satisfaction about the prima facie case against accused and the role played by accused, which is sine quo non for imitating criminal action against accused. Section 202 Cr.P.C. was amended in the year 2005 by the code of criminal procedure (Amendment) Act, 2005 for a vital purpose and ward off false complaints and to save accused from unnecessary harassment. Thus such amended provision cast a duty on the Magistrate to conduct enquiry or direct investigating before issuing the process, so that false complaints can be dropped.

It is true that in view of ***Vijay Dhanuka Vs. Najima Mamtaj*** reported in reported in **(2014) 14 SCC 638**, since no mode or manner of inquiry is provided under section 202 Cr.P.C., examination of complainant and his witnesses can be made to decide whether there are sufficient grounds to proceed. In the instant case only the complainant was examined that too prior to making observation by court below that

for ascertainment of correctness of allegation, inquiry under section 202 is required in the present case. Therefore I find that this is a fit case, where instead of quashing complaint, the case may be remitted to the concerned Magistrate for passing fresh order following the provisions of section 202 Cr.P.C. uninfluenced by any observation made herein.

Therefore as it appears from the record that the complainant has lodged the complaint against some offices and not against any individual and it further appears that the Court was of the view that an enquiry under Section 202 is required to ascertain as to whether there are grounds of proceeding or not and also in view of the fact that some of the offices/accused situates beyond the jurisdiction of the Court, the order of issuing process all on a sudden by the Court below on 31.07.2024 is perverse and is required to be interfered by this Court invoking this Court's jurisdiction under Section 482 of the Cr.P.C.

In such view of the matter, the order dated 31st July, 2024 and all subsequent orders are hereby set aside.

The Court below is directed to make enquiry as he decided in his earlier order dated 28.06.2024 and thereafter he is to decide whether he will proceed under Section 203 of the Cr.P.C. or under Section 204 of the Cr.P.C. and the entire process will be completed by the Court below within a period of 90 days from the date of communication of this order.

Accordingly, CRR 4361 of 2024 stands disposed of.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta

(Dr. Ajoy Kumar Mukherjee, J.)