

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

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 4255 of 2022

**Pradeep Kumar @ Pradeep Kumar Jain
-Vs-
M/s. AKJ Minerals Ltd.**

For the Petitioner : Mr. Sabyasachi Banerjee, Sr.Adv.
Mr. A. Jena
Mr. Debang Das

Hearing concluded on : 03.11.2025
Judgment on : 28.11.2025

UDAY KUMAR, J.: –

1. The present Revisional Application, pending before this Court since 2022, was taken up for final disposal. Despite the record reflecting the last appearance of Learned Counsel for the Opposite Party on December 14, 2022, followed by a formal submission of relinquishment on February 2, 2025, no one has appeared to contest the matter on behalf of the Opposite Party. Considering the considerable period of pendency and the apparent lack of interest on the part of the Complainant to prosecute the matter herein, this Court finds it necessary to proceed for an *ex parte* hearing to prevent further stagnation. Learned Senior Counsel, Mr. Sabyasachi Banerjee, was heard fully and comprehensively on behalf of the Petitioner, and the matter was fixed for judgment (C.A.V.).
2. This Revisional Application, preferred under the compelling canopy of Section 482 read with Sections 397 and 401 of the Code of Criminal Procedure, 1973

(Cr.P.C.), challenges the fundamental legality of the criminal proceeding. The Petitioner, Shri Pradeep Kumar @ Kumar Jain, seeks the exceptional remedy of quashing Complaint Case No. C/S 71812 of 2022, including the consequential order of cognizance dated August 11, 2022, and the order issuing process dated August 31, 2022, currently pending before the Learned Metropolitan Magistrate, 19th Court, Calcutta.

3. The underlying complaint alleges grave offenses, including Criminal Breach of Trust (S. 406 IPC), Forgery (Ss. 465/467/471 IPC), and Extortion (Ss. 384/385/389/511 IPC), which necessarily demand the highest level of judicial scrutiny. The primary challenge rests upon two crucial grounds:

- (i) Mandatory procedural non-compliance with the proviso to Section 202(1) Cr.P.C., and

- (ii) The inherent legal untenability of converting what is essentially a disputed commercial transaction into a criminal offense.

4. The substratum of the dispute is a commercial transaction concerning an accommodation loan of Rs. 2 Crore extended in 2011 by the Petitioner to the Complainant (Opposite Party). The relationship, which commenced with the furnishing of multiple security cheques, led to an initial proceeding under Section 138 of the Negotiable Instruments Act, 1881, which was settled in 2019.

5. The subsequent allegations are marked by mutually exclusive factual narratives:

- i. The Complainant (Opposite Party) asserts that the loan was fully and finally settled for Rs. 1.11 Crore in 2019, evidenced by the Petitioner's

own judicial admission. Consequently, the Petitioner is alleged to have dishonestly retained and forged two old cheques by interpolating the year from "2011" to "2019" to initiate malicious recovery proceedings demanding Rs. 3 Crore in Ranchi.

- ii. The Petitioner, conversely, asserts that the agreed final settlement was Rs. 4.11 Crore, and the Opposite Party issued three new cheques totalling Rs. 3 Crore towards the balance liability on June 14, 2019.

6. The subsequent dishonour of these cheques compelled the Petitioner to institute legitimate recovery proceedings in Ranchi. The impugned Calcutta complaint is characterized as nothing more than a vexatious "counterblast" to stifle the Petitioner's rightful legal actions.
7. Learned Senior Counsel for the Petitioner, Mr. Sabyasachi Banerjee, submitted that the entire criminal proceeding is fundamentally vitiated and constitutes a patent abuse of the process of law, necessitating this Court's intervention under Section 482 CrPC.
8. He placed primary emphasis upon the mandatory nature of the proviso to Section 202(1) Cr.P.C.. It is an undisputed fact that the Petitioner is a permanent resident of Ranchi, Jharkhand, a place situated beyond the territorial jurisdiction of the Learned Metropolitan Magistrate, Calcutta.
9. Learned Counsel contended that the Learned Magistrate acted in flagrant violation of the legislative command by issuing process immediately on August 31, 2022, without conducting the statutorily mandated inquiry or investigation. This failure bypassed the crucial safeguard designed to protect a distant accused from the inherent harassment and costs associated with defending frivolous, unsubstantiated charges in a distant jurisdiction.

10. The second limb of the argument was that the dispute, being fundamentally a commercial transaction concerning debt recovery, lacks the requisite *mens rea* for the alleged offenses, particularly Criminal Breach of Trust and Extortion, which concern the honest pursuit of a (disputed) balance debt.
11. The core issue requiring decisive determination is the procedural integrity of the order issuing process. This case falls squarely within the scope of the mandatory procedural safeguard enshrined in the proviso to Section 202(1) Cr.P.C.:

"Provided that where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, he shall postpone the issue of process 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."

12. The undisputed fact that the Petitioner resides outside the jurisdiction of the Calcutta Court unequivocally attracts this mandatory provision. The judicial record is devoid of any indication that an inquiry or investigation was conducted between the date of taking cognizance (11.08.2022) and the date of issuing summons (31.08.2022). The immediate issuance of summons, particularly given the serious allegation of forgery and the existence of highly contentious counter-cases in Ranchi, constitutes a failure to act judiciously.
13. The Hon'ble Supreme Court, in pronouncements such as **Sunil Todi vs. State of Gujarat** (AIR 2022 SC 3762) and **Suresh Patanjali vs. State of T.N.**, (2020) 12 SCC 569 has unequivocally reiterated that the failure to

adhere to this mandate when the accused resides outside the jurisdiction constitutes a fatal procedural error that vitiates the entire process.

14. As articulated in **K. Sasidharan Nair vs. Moni V.J.** (2009) 1 SCC 706, the objective is to screen out frivolous complaints, and protect individuals from the harassment of travelling long distances to face unsubstantiated charges, an objective the Learned Magistrate failed to achieve by bypassing the statutory mechanism.
15. The failure to conduct an inquiry, even for a few days, renders the order of 31.08.2022 issuing process null and void. This procedural error is independent of the merits of the allegations and is, by itself, sufficient to warrant the setting aside of the impugned order. Permitting the proceedings to continue based on a flawed order would clearly constitute an abuse of the process of the Court, justifying the invocation of inherent powers under Section 482 CrPC as held by Hon'ble Supreme Court in **Pepsi Foods Ltd. vs. Special Judicial Magistrate**, (1999) 8 SCC 468.
16. This Court finds that the Learned Metropolitan Magistrate proceeded in gross disregard of the specific statutory obligation imposed by the proviso to Section 202(1) Cr.P.C. The immediate issuance of summons against a distant accused resulted in a jurisdictional error of law. The proceedings, having been initiated upon a procedurally flawed foundation that failed to protect the Petitioner from distant harassment, must inevitably collapse. This procedural error is, by itself, sufficient to warrant the setting aside of the impugned order, thereby justifying the invocation of inherent powers under Section 482 Cr.P.C. to prevent the abuse of the process of the Court.

17. In consequence of the findings recorded above, and holding that the failure to comply with the mandatory procedural safeguard under the proviso to Section 202(1) Cr.P.C. constitutes a fatal jurisdictional lapse that vitiates the order of issuance of process and the entire consequential criminal proceeding, this Court passes the following definitive orders:

- a) The Revisional Application, C.R.R. No. 4255 Of 2022, is hereby allowed.
- b) The Order dated August 31, 2022, passed by the Learned Metropolitan Magistrate, 19th Court, Calcutta, directing the issuance of process and summons against the petitioner, Shri Pradeep Kumar @ Pradeep Kumar Jain, is set aside with immediate effect.
- c) Consequently, the entire criminal proceeding of Complaint Case No. C/S 71812 of 2022, presently pending before the Learned Metropolitan Magistrate, 19th Court, Calcutta, stands quashed due to the said fatal procedural infirmity.
- d) There shall be no order as to costs.

18. All consequential Interim order/orders, if any, shall stand vacated.

19. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.

20. Case diary, if any, be returned forthwith.

21. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)