

Item 01.08.
No. 2025
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Ct 03

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

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CRR 135 of 2025
With
IA NO: CRAN 3 of 2025

Nuddea Plantations Limited & Ors.
Vs.
The State of West Bengal & Anr.

Mr. Bhaskar Roy Mahasaya,
Ms. Ambalika Ghosh. ... for the
petitioners.

Mr. Utpal Saha,
Ms. Puja Bhupal ... for the opposite party
No.2.

1. Both the parties to this revisional application are present before this Court.
2. This revisional application has been preferred, seeking to assail the impugned order of taking cognizance, which stands tainted by glaring non-compliance of mandate of Section 225 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (In short BNSS).
3. Learned counsel appearing on behalf of the petitioner has submitted that Learned Magistrate did not comply with the mandate of Section 225 of BNSS, thereby directing enquiry as admittedly petitioner resides beyond the territorial

jurisdiction of the Learned Trial Court.

4. In support of his contention, learned counsel appearing on behalf of the petitioner has relied on a case of **Vijay Dhanuka ETC. versus Najima Mamtaj ETC.** reported in **(2014) 14 SCC 638.**
5. Per contra, learned counsel appearing on behalf of the opposite party No. 2 has relied on a case of **Sunil Todi and others versus State of Guujarat & Anr.** reported in **2021 SCC OnLine SC 1174** and submits that Learned Magistrate before taking cognizance examined witness on oath as well examined the documents filed by Firisti and after being satisfied took cognizance and issued process.
6. On careful perusal of the record, it appears that on 08.10.2024 a complaint under Section 138 of the N.I Act was filed before the Court of Learned Additional Chief Judicial Magistrate, Siliguri and Learned ACJM took the case to his own file for disposal. The case was fixed on 09.12.2024 while the same was adjourned and next date was fixed on 21.12.2024 for S.A. On 21.12.2024, director of the complainant company was examined on oath and Learned Magistrate examined the

document filed on behalf of the complainant by Firisti and after being satisfied cognizance was taken and notice was issued.

7. In the case of **Vijay Dhanuka ETC. (supra)**

Hon'ble Apex Court observed as follows:-

“ It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. No specific mode of manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process.”

8. In the case of **Sunil Todi and others (Supra)**

Hon'ble Apex Court, by referring to the decision of the Constitution Bench has handed down the following:-

“38. Section 145 of the NI Act provides that evidence of the complainant may be given by him on affidavit, which shall be read in evidence in an inquiry, trial or other proceeding notwithstanding anything contained in

the Cr.PC. The Constitution Bench held that Section 145 has been inserted in the Act, with effect from 2003 with the laudable object of speeding up trials in complaints filed under Section 138. Hence, the Court noted that if the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. Consequently, it was held that Section 202(2) CrPC is inapplicable to complaints under Section 138 in respect of the examination of witnesses on oath. The Court held that the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under Section 202.”

Though the learned Magistrate has not specifically stated that enquiry under Section 202 Cr.P.C. was conducted, it is evident that he conducted enquiry, wherein, he received the proof affidavit of the complainant and marked the documents produced by the complainant and on considering the entire records, has proceeded to take cognizance. Just because the words “enquiry under Section 202Cr.PC” is not mentioned anywhere, that by itself is not sufficient to hold that the entire proceedings stand vitiated, more particularly, when the learned Magistrate, after considering the entire materials available on records, has recorded his satisfaction that there existed prima facie case to proceed against the petitioner. Except the above, the petitioner has not canvassed any other valid reason or

ground to impugn the order taking cognizance.

The inquiry under Section 202(1) is generally dispensed with or relaxed, especially since Section 145 of the NI Act permits affidavits in lieu of oral examination.”

9. In the aforesaid view of the matter as well as keeping an eye to the observation of the Hon’ble Apex Court, I find that in the case at hand, Learned Magistrate duly enquired into the allegation by recording evidence of the complainant on oath and also considered the documents filed through Firisti on behalf of the complainant and that enquiry, in my humble opinion, qualifies to be construed as enquiry within the meaning of Section 225 of BNSS (corresponding to 202 Cr.P.C.).
10. In the aforesaid view of the matter, I find hardly any reason to exercise the power under Section 528 of BNSS (corresponding to Section 482 of Cr.P.C) in absence of any irregularity or perversity in the order impugned in this revisional application.
11. As a sequel, the revisional application stands dismissed.
12. Connected application also stands disposed

of accordingly.

13. Interim order, if any, also stands vacated.
14. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court

(Bibhas Ranjan De, J.)