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**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

CRR 489 of 2025

**Shri Bikash Lama
Vs.
The State of West Bengal**

Mr. Sourav Ganguly
Ms. Rishita Chakraborty
Ms. Gopal Roy ...for the Petitioner

Mr. Abhijit Sarkar
Mr. Aniruddha Biswas ...for the State

The instant application has been preferred challenging the order dated 2.9.2025 by which, the court below has reviewed his own order passed on 27.8.2025. It appears from the said order dated 27.8.2025 that the complainant filed one application against one Naresh Rathi and on receiving such complaint, the concerned Magistrate registered the case as complaint case and had issued pre-cognizance notice upon the proposed accused as per provision of Section 223 of the BNSS asking the proposed accused to appear either in person or through learned advocate in court on the scheduled date and time so as to provide him a right of hearing at a pre-cognizance stage.

By the subsequent impugned order dated 2.9.2025, the same court below has reversed the said order dated 27.8.2025 and came to a finding that the proposed accused is not a

resident within the jurisdiction of the court and therefore, he came to a conclusion that without examination of the complainant and his witnesses under Section 223(1) of the BNSS, the issuance of pre cognizance notice would not be proper and would cause procedural irregularities and miscarriage of justice. He further observed that non-compliance of the provision under Section 225(1) proviso (b) of the BNSS which mandates the examination of the complainant and the witnesses on solemn affirmation would hit the root of the proceeding which could vitiate the same and therefore referring the judgment of **Mina Kumari and another Vs. The State of Bihar and others** reported in **2006 (4) SCC 359**, said Magistrate observed that a civil court or criminal court, in the absence of any express provision, as inherent in their constitution can exercise all such powers as are necessary to do the right and to undo a wrong in course of administration of justice and therefore, the pre-cognizance notice along with annexures filed by the complainant was kept in abeyance and he directed the complainant to appear before the court on the next date along with witnesses for the purpose of examination on solemn affirmation.

Mr. Ganguly, learned counsel for the petitioner submits that this order has been passed in violation of the direction made by this court in **CRR 119 of 2025 (Kaberi Dey and others Vs. Sourav Bhattacharjee)** reported in **2025 SCC**

Online Cal 5928, which was communicated to all the Magistrates vide memo no. 5173-RG dated 23.7.2025. He further submits that the same court by its earlier order dated 27.8.2025 rightly followed the course of action to be followed in a complaint case, as decided by this court in the above-mentioned CRR 119 of 2025, but the same court by the subsequent impugned order has totally altered the earlier order relying upon the judgment of ***Mina Kumari (supra)*** which is erroneous and based on wrong interpretation of law and therefore, is liable to be set aside.

Learned counsel for the State submits that the law on this point, has already been settled by this Court in the case of ***Kaberi Dey & others (supra)*** and the Trial court was not justified in reversing his earlier order, without assigning any cogent reason.

I have considered the submissions made on behalf of both the parties. On perusal of the judgment passed by a co-ordinate Bench of this court in ***Kaberi Dey and others (supra)***, it appears that it clearly stated in paragraph 24 that once a complaint is filed, the court may take cognizance after hearing proposed accused. After such cognizance is taken, the court has to examine the complainant and his witnesses if any. Subsequently order can be passed under Section 226 or Section 227 of the BNSS directly or through Section 225 of the BNSS in accordance with the situation and there is no

ambiguity in reading the said provision which are *pari materia* with the provisions under the Code of Criminal Procedure. It was further held in the said judgment that at this stage, proposed accused is not required to produce any document and lay his defence beyond the complaint because the pre cognizance enquiry is offence centric and not offender centric and naturally at this stage proposed accused is not supposed to argue that no process should be issued against him and the scope of examination at the stage of pre-cognizance is extremely narrow and therefore, no detailed hearing can be afforded to a proposed accused.

On perusal of the impugned order, it appears that the court below came to a finding that since the proposed accused is not a resident within the jurisdiction of the court, so the complainant is required to be examined, otherwise it would cause procedural irregularities and miscarriage of justice.

Such observation of the Trial court has been made showing total disregard to the judicial discipline. Concerned Magistrate has clearly mis-interpreted the observations made by this High Court in Paragraph 24, 26 and specially para 29 of the judgment passed in ***Kaberi Dey case (supra)*** either intentionally or due to lack of capability of understanding legal intricacies. The concerned Magistrate has tried to venture going beyond his jurisdiction, which is seriously deprecated and is hereby cautioned.

Since the pre-cognizance inquiry is offence-centric, it is needless to mention that there is no requirement to examine complainant and his witnesses before taking cognizance to ascertain whether the accused who is residing beyond the jurisdiction of the court has committed any offence or not. The order impugned therefore is not only perverse but also is an attempt to disregard the specific direction made by this court to be followed in such cases.

In such view of the matter, the order impugned dated 2.9.2025 is hereby set aside. CRR 489 of 2025 is accordingly allowed.

Urgent Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)