IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE UDAY KUMAR

CRR 646 OF 2020

DINESH KUMAR AGGARWAL & ANR.
-VS-
STATE OF WEST BENGAL & ANR.

For the Petitioners	*: Mr. Dipanjan Dutt* *Mr. Tanmoy Roy*
For the Opposite Party No.2	*: Mr. Satadru Lahiri* *Mr. Niladri Banerjee* *Mr. Safdar Azam* *Mr. Mili Mondal* *Ms. Antara Ganguly*
Hearing concluded on	*: 20.02.2026*
Judgment on	*: 06.03.2026*

UDAY KUMAR, J.: –

INTRODUCTION

1. This Court is seized of a revisional application preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), sought the quashing of proceedings in Case No. CS 106128 of 2018, currently pending before the Learned

Metropolitan Magistrate, 20th Court, Calcutta. The petitioners, who occupy high-ranking echelons within a corporate entity, have moved this Court primarily to challenge the legality of the Order dated 24.12.2019. By virtue of the said order, the Learned Magistrate directed the issuance of process against them for the alleged commission of offences punishable under Sections 406, 420, and 120B of the Indian Penal Code, 1860.

2. The essence of the challenge is not anchored in a factual defense on the merits, but rather in a fundamental procedural infirmity. The Petitioners contend that the summoning order is a legal nullity due to non-compliance with the mandatory requirements of Section 202 of the Code, asserting that the underlying police inquiry was conducted by an officer not expressly authorized or named by the Learned Magistrate, thereby vitiating the jurisdictional foundation of the summons.

BACKGROUND FACTS

3. The genesis of the litigation lies in a commercial transaction involving the supply of electrical goods. The complainant/opposite party no. 2 alleges that several cheques issued as "security" during the inception of the business relationship were fraudulently retained. It is alleged that the petitioners, with dishonest intent, presented one such cheque for encashment despite being formally intimated that the underlying bank account had been closed years prior. The cheque was returned with the remark 'Account Closed,' leading to the filing of the instant complaint.

4. Upon receipt of the complaint, the Learned Magistrate took cognizance and initiated proceedings under Chapter XV of the Code. On 02.04.2019 and 23.04.2019, the Magistrate examined the Complainant and an independent witness, Madan Kumar Bose, on Solemn Affirmation (S.A.) to verify the veracity of the allegations.

5. Since the petitioners/accused admittedly reside in Mumbai—beyond the territorial jurisdiction of the Learned Metropolitan Magistrate, Calcutta—the mandatory proviso of the 2005 Amendment to Section 202 of the Code was triggered. Consequently, the Learned Magistrate postponed the issuance of process and directed the Officer-in-Charge (O.C.) of Hare Street Police Station to conduct an investigation.

6. On 10.12.2019, a report was submitted to the Court. However, the record reveals a procedural schism: the actual field inquiry was conducted by a Sub-Inspector (S.I.) or Assistant Sub-Inspector (A.S.I.), while the O.C. merely acted as a conduit, forwarding the report under his official signature without personally conducting the inquiry as directed. On 24.12.2019, the Learned Magistrate, perusing both the oral evidence on oath and the police report, recorded his satisfaction and issued the impugned summons.

SUBMISSIONS OF THE PARTIES - ON BEHALF OF THE PETITIONERS:

7. Mr. Dipanjan Dutta, Learned Counsel for the petitioners submitted that the summoning order is ex-facie illegal and suffers from a fundamental jurisdictional error. It is contended that since the Petitioners reside in Mumbai—admittedly beyond the territorial jurisdiction of the Learned Metropolitan Magistrate, Calcutta—the mandate of the 2005 Amendment to Section 202 of the Code of Criminal Procedure is absolute. It is argued that the postponement of process and the conduct of an inquiry is a "sine qua non" for proceeding against outstation accused. Mr. Dutt placed heavy reliance on the doctrine of delegatus non potestdelegare, asserting that a specific judicial entrustment to an O.C. cannot be sub-delegated. The same has been held by Hon'ble Supreme Court in paragraph 10 of *Krishna Chandra Paul v. Md. Nantu Sk. [1999 SCC OnLine Cal 271]*. It has been stated that :

> *"The person directed by the Magistrate cannot delegate his function; if he does so, the delegate acquires no jurisdiction... the Magistrate is the only competent authority to decide who shall be the person to reveal the truth."*

8. It is further stated that the Learned Magistrate acted as a mere "post office" by accepting a report generated by an unauthorized officer. Referring to the recent decision in *Avik Majumder v. Anil Kumar Sharma [2025 SCC OnLine Cal 9105]*, Mr.

Dutt argued that an inquiry conducted by an unauthorized officer (by police personnel other than the one specifically named in the order) did not constitute an "inquiry" in the eyes of the law, thereby rendering the Magistrate's satisfaction a fruit of a poisonous tree. This procedural lapse vitiates the order of summons.

9. Consequently, the petitioners seek the quashing of the proceedings on the ground that a mandatory statutory safeguard has been reduced to an empty formality.

ON BEHALF OF OPPOSITE PARTY NO. 2:

10. Reverting to the contentions of the petitioners, Mr. Satadru Lahiri, Learned Counsel for the complainant countered the application, characterizing it as an attempt to stifle a legitimate prosecution via hyper-technicalities. It is argued that the Magistrate satisfied the statutory mandate of Section 202 by examining a second witness, Madan Kumar Bose, on Solemn Affirmation. Mr. Lahiri relied upon *Vijay Dhanuka v. Najima Mamtaj [(2014) 14 SCC 638]*, where the Hon'ble Supreme Court held at paragraph 14:

> *"The word 'shall' in Section 202... makes it obligatory upon the Magistrate to enquire into the case himself or direct an investigation... The examination of witnesses by the Magistrate himself is nothing but an inquiry envisaged under Section 202."*

11. It is contended that since an independent inquiry was held by the Magistrate /Court, the requirement for out-of-jurisdiction accused was fully satisfied, and the police report was merely corroborative. It does not vitiate the Magistrate's independent satisfaction.

12. Furthermore, Mr. Lahiri relied on *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi [(1976) 3 SCC 736]* to emphasize that at the stage of Section 202, the petitioner/accused has absolutely no *locus standi* to challenge the "mode" of inquiry when they have no right to participate in it.

13. Furthermore, under Section 465 of the Code, no order is reversible for a technical irregularity unless it has occasioned a "failure of justice." In the instant case, the Petitioners have failed to show any prejudice caused by the rank of the officer who verified the bank records.

QUESTIONS FOR DETERMINATION

14. Having mulled over the rival contentions and scanned the Trial Court Records, this Court identifies the following pivotal questions for determination for proper disposal of this revision:

> **A.** Whether the examination of an independent witness (Madan Kumar Bose) by the Learned Magistrate, subsequent to the Complainant's examination, constitutes a valid "Inquiry" under the first limb of Section 202(1), thereby fulfilling the mandatory requirement for out-of-jurisdiction accused?

B. Whether the delegation of the field inquiry by the O.C. to a subordinate officer constitutes an impermissible sub-delegation that vitiates the report, or whether it is a curable irregularity?

C. Whether the summoning order can be sustained independently based on the oral evidence recorded on oath by the Magistrate?

DISCUSSIONS AND FINDINGS

THE MANDATORY NATURE OF SECTION 202 AND THE "INQUIRY" THRESHOLD:

15. The core of the controversy lies in whether the summoning order dated 24.12.2019 is vitiated by a jurisdictional error. It is a matter of record that the Petitioners reside in Mumbai, beyond the territorial jurisdiction of the Learned Trial Court, necessitating the invocation of the 2005 Amendment to Section 202 of the Code. The legislative intent behind this amendment is no longer *res integra*. As observed by the Hon'ble Apex Court in *Vijay Dhanuka v. Najima Mamtaj [(2014) 14 SCC 638]* at Paragraph 12:

> "The use of the word 'shall' in Section 202 CrPC... is a safeguard to see that innocent persons are not harassed by unscrupulous persons by filing false complaints... especially when the accused is staying at a far-off place."

16. However, the mandate is not restricted to a "Police Investigation" alone. Indubitably, the 2005 Amendment to Section 202 Cr.P.C makes it obligatory for a Magistrate to "postpone the issue of process" and conduct an inquiry or investigation where the accused resides beyond his jurisdiction.

17. It is imperative to note that the mandate of Section 202 is not restricted to a "Police Investigation" alone. The statute provides three distinct conduits for the Magistrate to reach a state of prima facie satisfaction: (i) Inquiry by the Magistrate himself; (ii) Investigation by a police officer; or (iii) Investigation by such other person as the Magistrate thinks fit.

SUB-DELEGATION VS. JUDICIAL INQUIRY BY THE COURT:

18. The petitioners have anchored their challenge on the bedrock of delegatus non potestdelegare, placing heavy reliance on *Krishna Chandra Paul v. Md. Nantu Sk.* and the recent *Avik Majumder v. Anil Kumar Sharma. In Avik Majumder,* the Court quashed a summoning order because the Magistrate had delegated the inquiry to a specific officer, but the report was prepared by a subordinate without the Magistrate’s own inquiry.

19. I find the facts of the present case to be fundamentally distinguishable from the aforementioned precedents. In both *Krishna Chandra Paul and Avik Majumder*, the Magistrates had issued process solely on the basis of a procedurally defective police report. In the case at hand, the record reveals a significant factual departure. On 23.04.2019, the Learned Magistrate examined not only the complainant but also an independent witness, Madan Kumar Bose, on Solemn Affirmation. Under Section 2(g) of the Code, "Inquiry" means every inquiry, other than a trial, conducted by a Magistrate. By examining an additional witness to verify the truth of the complaint, the Learned Magistrate had already commenced and substantially completed an independent inquiry under the first limb of Section 202(1) before even directing a police report.

THE POLICE REPORT AS CORROBORATIVE SURPLUSAGE:

20. The direction to the O.C., Hare Street P.S., was an act of "abundant caution" by the Learned Magistrate to corroborate the witness's testimony regarding the "Account Closed" status of the bank account. While the field inquiry was conducted by an ASI and forwarded by the O.C., this does not collapse the foundation of the Magistrate’s satisfaction. This case establishes that a faulty police report cannot "un-satisfy" a Magistrate's mind if that satisfaction was already anchored in judicial evidence recorded under the first limb of Section 202(1). The satisfaction was anchored in the oral evidence recorded on oath. To quash a proceeding where the

Magistrate has already held a judicial inquiry would be to elevate form over substance.

THE SHIELD OF SECTION 465 AND THE ABSENCE OF PREJUDICE:

21. Procedure is the "handmaiden of justice." Section 465 of the Code, which dictates that no order of a competent Court shall be reversed on account of any "error, omission or irregularity" unless it has occasioned a "failure of justice."

> “...no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered... on account of any error, omission or irregularity... unless in the opinion of that Court, a failure of justice has in fact been occasioned.”

22. In the instant case, the petitioners have failed to demonstrate any substantive prejudice. They do not contest the factual accuracy of the bank account being closed; rather, they merely challenge the "rank" of the officer who verified that fact. Such hyper-technicality cannot be allowed to shield an accused from trial, particularly when the records prima facie disclose the ingredients of Section 420 (Cheating)—specifically the dishonest inducement by presenting a defunct security cheque—and Section 406 (Criminal Breach of Trust).

THE PROCEDURAL VS. SUBSTANTIVE CLEARANCE:

23. It is pertinent to observe that as the parties did not advance extensive arguments on the core ingredients of Sections 406, 420, and 120B of the IPC, this Court has not "cleared" the case on its merits. The findings of this Court are strictly confined to the legality of the process by which the accused were summoned. By granting liberty to the petitioners to challenge the merits at a later stage, such as at the stage of Framing of Charges, the Court ensures that the petitioners are not prejudiced by a "technical" loss at this revisional stage.

LIMITATIONS OF REVISIONAL JURISDICTION:

24. The High Court, while exercising its revisional jurisdiction, must resist the temptation to act as a Trial Court. Since the merits of this case involve "disputed questions of fact"—including the intent behind the presentation of the cheque—these are matters best left to the wisdom of the Trial Magistrate. Granting liberty to raise these issues ensures the Trial Court understands that this Court’s dismissal was limited to the "defective process" argument and does not constitute a judicial endorsement of the criminal allegations themselves.

PRESERVATION OF THE RIGHT TO SEEK DISCHARGE:

25. If the petitioners subsequently produce evidence suggesting the dispute is purely civil or that the essential ingredients of cheating are absent, they reserve the right to move for discharge under Section 239 or 245 of the Code (depending on the nature of the case). Without explicitly clarifying that the merits remain open, a subordinate court might inadvertently conclude that this Court has already validated the charges, thereby causing a failure of justice.

MERITS OF THE OFFENCE AND DISPUTED FACTS

26. As the parties chose to restrict their submissions to procedural vires, this Court refrains from an in-depth analysis of the penal ingredients of Sections 406, 420, and 120B IPC. The allegations involve a complex commercial transaction and the subsequent return of a cheque marked "Account Closed." Whether the petitioners possessed the requisite mens rea or whether the dispute resides exclusively within the domain of civil law are quintessential "disputed questions of fact." Such matters cannot be adjudicated within the limited prism of a Section 482 revision; they necessitate a trial on evidence, which is the exclusive province of the Trial Court.

27. As the parties chose not to submit arguments on the ingredients of Sections 406, 420, and 120B IPC, this Court refrains from an in-depth analysis of the same. The allegations involve a commercial transaction and the subsequent return of a cheque marked "Account Closed." Whether the petitioners possessed the requisite *mens rea* or whether the dispute is purely civil in nature are quintessential "disputed questions of fact." Such matters cannot be adjudicated within the limited prism of a Section 482 revision. They require a trial on evidence, which is the exclusive domain of the Trial Court.

CONCLUSIONS ON QUESTIONS OF LAW

28. Based on the exhaustive discussions above, this Court arrives at the following conclusions:

a. On the Validity of the Inquiry: YES. The examination of the independent witness, Madan Kumar Bose, on 23.04.2019, subsequent to the complainant's examination, constitutes a valid and complete "Inquiry" by the Magistrate himself under the first limb of Section 202(1) of the Code. Once the Magistrate conducts such a judicial inquiry, the mandatory requirement for out-of-jurisdiction accused is legally satisfied, regardless of any subsequent police investigation.

b. On the Legality of Sub-Delegation: The sub delegation is irregular but not fatal. While the Officer-in-Charge

(O.C.) technically sub-delegated the field inquiry to a subordinate (S.I./A.S.I.), the act of the O.C. forwarding the report under his official signature constitutes implied adoption and authentication. In this specific factual matrix—where the report was merely corroborative of a witness's testimony already recorded by the Court—the sub-delegation does not amount to a jurisdictional error that would vitiate the summons. A technical irregularity in a corroborative police report (sub-delegation) does not vitiate the summoning order if the Magistrate has independently applied his mind to the statements recorded on Solemn Affirmation (S.A.).

c. On the Curability of the Irregularity: YES. Procedural law should facilitate substantive justice. The alleged discrepancy in the rank of the inquiring officer is a curable irregularity under Section 465 of the Code. Since the petitioners did not dispute the "Account Closed" status (the fact verified by the officer), no "failure of justice" or "prejudice" has been demonstrated. Consequently, the summoning order remains robust. In such event, the High Court shall not exercise its revisional jurisdiction to quash a summons issued on a prima facie under the first limb of Section

202(1) CrPC. disclosure of offences under Sections 406/420/120B IPC.

d. On the Sustainability of the Order: YES. Even if the police report were to be discarded in its entirety as procedurally defective, the summoning order is fully sustainable based solely on the oral evidence recorded on oath by the Learned Magistrate under Sections 200 and 202 of the Code.

FINAL ORDER AND DIRECTIONS

29. In the light of the legal propositions set out hereinabove, I find that the pre-summoning process followed by the Learned Metropolitan Magistrate, 20th Court, Calcutta, is legally sound and does not warrant interference under the inherent jurisdiction of this Court. The petitioners' attempt to short-circuit the trial on a technicality must fail. Therefore, revision is, therefore, liable to be dismissed.

30. Accordingly, it is ordered:

(i) The Revisional Application, CRR No. 646 of 2020, is hereby dismissed.

(ii) The impugned Order dated 24.12.2019 and all subsequent proceedings in Case No. CS 106128 of 2018 are stayed no longer.

(iii) The Learned Trial Court is directed to proceed with the trial in accordance with the law and conclude the same as expeditiously as possible.

(iv) Since this Court has exclusively adjudicated upon the procedural validity of the summoning process, the merits of the allegations under Sections 406, 420, and 120B of the IPC remain untouched. The petitioners are granted liberty to raise all contentions regarding the civil nature of the dispute or the absence of criminal ingredients at the stage of Framing of Charges.

(v) The petitioners are directed to appear before the Learned Trial Court within four weeks from today to participate in the proceedings.

(vi) The Learned Trial Court shall proceed with the matter independently and on its own merits, without being influenced by any observations made herein, which are strictly limited to the regularity of the summoning process.

31. Let a copy of this judgment be transmitted to the Learned Metropolitan Magistrate, 20th Court, Calcutta, for immediate information and compliance.

32. There shall be no order as to the cost.

33. All consequential interim order/orders, if any, shall stand vacated.

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

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

36. 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.

37. Parties to act on a server copy of this order.

(Uday Kumar, J.)