

(2022) 06 CAL CK 0077

In the Calcutta High Court

Case No : Criminal Revision No. 2500 Of 2019, CRAN 3 Of 2021

M/S Indus Tower Limited

APPELLANT

Vs

Narayan Chandra Rajak

RESPONDENT

Date of Decision : 24-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 420, 423, 506
Code Of Criminal Procedure, 1973 — Section 156(3), 200, 202, 203, 204

Citation : (2022) 06 CAL CK 0077

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Sandipan Ganguly, Ayan Bhattacharjee, Rajesh Upadhayay, Surabita Biswas

Final Decision : Disposed Of

Judgement

Ajoy Kumar Mukherjee, J

1. This revisional application has been preferred for quashing of proceedings in Case No. 986C of 2018 now pending before the learned Judicial Magistrate, 3rd Court Bankura under section 406/420/423/506/120B of the Indian Penal code. Opposite party is not represented. It is submitted in the complain that opposite party is the co-sharer of the undivided ancestral property being khatian No. 601, Dag No. 1212 and 1213 under Mouza Ramchandrapur, Bankura. Co-accused persons are the other co-sharers of said property. In the month of June, 2007, accused No. 5 had given proposal to the opposite party to set up a mobile tower at the said property at a monthly rent of Rs. 10,000/- and sum will be divided among four co-sharers. In the month of January, 2008 when opposite party visited the said property, he found that adjacent vacant land was being used for construction of telecom tower. On enquiry opposite party came to know that an agreement was signed between Adal Rajak, Sukhamoy Rajak and other with M/S Bharti Infratel Limited by which licence was granted at a monthly license fee of Rs. 7,500/-per month of which each co-sharer will get Rs.3,500/- per month

except opposite party. Opposite party raised vehement protest against said agreement but he was abused and threatened by co-accused persons. In April, 2008, opposite party went to the office of M/S Bharti Infratel Limited and they agreed to pay monthly licence fee as agreed upon and he received the agreed amount per month till 11.07.2012 but suddenly said payment was stopped. After repeated letters, payment was again made till 09.04.2014. Opposite Party again went to the office of petitioner/company, wherein opposite party was given a copy of a leave and license agreement stating that opposite party was not entitled to receive any rent and the opposite party was driven out by force when he demanded to see the original of the said leave and license agreement which have been allegedly forged by accused Nos. 1, 2, 3, & 4 and thereby cheated the opposite party.

2. The opposite party herein filed an application under section 156(3) of the Code of Criminal Procedure, 1973 praying before the learned Court to direct the local police authorities to register a First Information Report treating the petition of complaint as First Information Report but learned Magistrate recorded that the case would be inquired. Immediately thereafter took cognizance and without citing any prudent reason transferred the file of the said case to the Court of learned Judicial Magistrate, 3rd Court, Bankura for inquiry, trial and disposal.

3. The main allegation is that learned Magistrate did not find it expedient to comply with the mandatory statutory provision under Section 200 or Section 202 of the Code of Criminal Procedure, 1973, which establishes an obligation upon the learned Magistrate for issuing process to decide whether there is sufficient ground for proceeding against the accused persons, i.e. the petitioner company in the instant case. In fact record does not reflect any judicial order passed by the learned Magistrate recording his satisfaction of a prima facie case against the petitioner directing issuance of process against the petitioner. Thus, the petitioner's contention is that the purported allegation made by the opposite party in the petition of complaint is absurd and it does not make out any case under any of the Sections 406/420/423/506/120B of the Indian Penal Code.

4. Learned counsel for the petitioner Mr. Sandipan Ganguly, submits that learned Chief Judicial Magistrate have taken cognizance mechanically and without applying his mind. Moreover, it is not clear whether the opposite party and his witness were examined under Section 200 of the Code of Criminal Procedure , 1973 or not which give rise to possibility of severe procedural latches contrary to the provision of the Code. Moreover, the accused persons are residing at a place beyond the area in which the learned Magistrate exercises his jurisdiction and in this case, learned Magistrate ought to have postponed the issue of process against the accused 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.

5. Mr. Ganguly, further submits, if the above mentioned facts and circumstances is taken into account, the allegation made by the opposite party in the petition of

complaint, is found to be baseless and no case is made out against the petitioner. As such he has prayed for quashing the entire proceedings being case No. 986C of 2018.

6. Before going through further details let me quote the order impugned passed by learned Chief Judicial Magistrate, Bankura and Judicial Magistrate, 3rd Court, Bankura on 24.12.2018 and 19.01.2019.

24-12-2018

A petition of complaint has been filed by the Narayan Rajak against 1. Adal Rajak, 2. Uttam Rajak, 3. Sukhamoy Rajak, 4. Sujit Rajak, 5. Chief Executive Officer Bharati Infratel Ltd. And 6. Indus Towers Ltd. praying for sending the complaint to the O/C, Onda P.S. for investigation U/S-156(3) Cr.P.C. and treating the same as F.I.R., on the ground stated in the petn.

Heard. Seen. Perused the petition. Considered.

It appears that instead of treating it as FIR, the case should be inquired.

As such, register it as Complaint Case.

Cognizance is taken.

Let the case be made over U/Sec. 192 Cr.P.C. to the Court of Ld. 3rd J.M., Bankura for inquiry, trial & disposal.

To 19-01-2019 for appearance.

Petitioner is hereby directed before the Ld. J.M., 3rd Court, Bankura on the date fixed.

Mr. M.M. Hossain, J.M., 3rd Court, Bankura.

The original case record is received by way of transfer from the Ld. C.J.M., Bankura for disposal.

Note in the Trial Register.

Fix 19.01.2019 for app.

7. From the aforesaid order sheet it is clear that Chief Judicial Magistrate, Bankura while taking cognizance of the offence had clearly opined that instead of treating the complaint as FIR, the case should be inquired and accordingly, he registered it as a complaint case and took cognizance vide order dated 24.12.2018 but it appears from order dated 08.01.2019 passed by Judicial Magistrate, 3rd Court, Bankura that immediately after receiving the case record by way of transfer, he only noted the case in the trial register and fixed the date for appearance of the accused persons. This is a glaring example how the concerned Magistrate has misused the power of issuing process without being satisfied as to whether there are grounds for proceeding in the present case or not.

8. Section 200 of the Court is very specific on this point:-

"200. Examination of Complaint.-A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses;

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them".

9. It is trite of law that the Magistrate must carefully scrutinise statement to find out the truthfulness or otherwise of the allegations and then examine if there is prima facie evidence about commission of the offence before issuing summons to the accused persons. While issuing the process under Section 204 of the Code of Criminal Procedure the Magistrate must in brief set out the allegations in the petition of complaint and the materials brought on record and must state that in his opinion process should be issued. The court is to see whether prima facie case is established and ingredients of offence can be culled out from the complaint and only when there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, process should be issued.

10. It is well settled principle of law in view of judicial pronouncements that in case of a complaint under section 200 Cr.P.C. the Magistrate can take cognizance of the offence if made out and then has to examine the complainant and his witnesses, if any, to ascertain whether a prima facie case is made out against the accused to issue the process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. Such examination is provided in order to find out whether there is any or not sufficient ground for proceeding. For such purpose the words "sufficient grounds" used under Section 203 Cr.P.C. have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction.

11. It is also well settled that summoning of offence in a criminal case is a serious matter and criminal law cannot be set in motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of the prima

facie case on the basis of specific allegation made in the complaint supported by satisfactory evidence and other materials on record. This judicial process should not be an instrument of oppression or endless harassment. In order to determine the question whether any process is to be issued or not, the Magistrate has to be satisfied whether there is sufficient ground for proceeding or not. Whether there is sufficient ground for conviction is not a condition precedent for issuing process under section 204. It is the satisfaction either by examining of the complaint and his witnesses or by the inquiry contemplated under section 202 to hold that there is sufficient ground for proceeding with the complaint. In the present case no initial statement is appeared to have recorded by the concerned Magistrate. No inquiry has been made either by CJM or by the concerned Magistrate. He should have feel it necessary to take the recourse under section 202 when it has been specifically alleged that the accused persons are residing outside the jurisdiction of the court concerned.

12. Apex court in *Abhijit Pawar Vs. Hemant Madhukar Nimbalkar & another*, reported in (2017) 3 SCC 528 observed:

"23. Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 CrPC was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-6-2006 by adding the words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction". There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment."(emphasis added)

13. This view of the Supreme Court consistently finds supports in it's earlier decisions also reported in *National Bank of Oman Vs. Barakara Abdul Aziz & another*, (2013) 2 SCC 788 and *Vijay Dhanuka and others Vs. Najima Mamtaj and others* , (2014) 14 SCC 638 and also in *Udai Shankar Awasthi Vs. State of Uttar Pradesh and another*, (2013) 2 SCC 435.

14. Considering , facts and circumstances of the case and that there is no reflection in the order impugned that concerned Magistrate has at all applied his judicial mind to determine as to whether there are grounds for proceeding and for issuance of process and that process has been issued without complying mandatory provision laid down in section 202 of the code, order dated January 08, 2019 along with all subsequent orders passed by Judicial Magistrate, 3rd Court, Bankura, in cases No. 986 C of 2018 is hereby quashed. Learned Magistrate is directed to take up the matter afresh and pass fresh orders after

complying with the procedure laid down in section 202 of the Code of Criminal Procedure.

15. C.R.R. 2500 of 2019 along with connected applications accordingly disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.