(2025) 01 CAL CK 0042

Calcutta High Court (Appellate Side)

Case No: CRR No. 1158 of 2023

Pradip Kumar Bardhan & Ors	APPELLANT
Vs	
State Of West Bengal & Anr	RESPONDENT

Date of Decision: Jan. 6, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 156, 190, 192, 200, 202, 203, 204, 482
- Negotiable Instruments Act, 1881 - Section 138, 141

Hon'ble Judges: Shampa Dutt (Paul), J

Bench: Single Bench

Advocate: Soumya Subhra Ray, Bibek Chatterjee, Tanmoy Chakraborty, Paramita Sahu, Pallab Kanjilal, Susmita Saha, Abhinaba Dan.

Final Decision: Disposed Of

Judgement

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceeding being C.R. Case No. 107 of 2019 pending before the learned Chief Judicial Magistrate, Tamluk at Purba Medinipur.

2. It is submitted by the learned counsel for the petitioners that vide order dated 17.06.2022 the learned Magistrate took cognizance of the offences alleged in the present case and issued process.

3. It is submitted by the petitioners that the petitioners herein reside outside the jurisdiction of the trial Court and the present case being a complaint case; the learned Magistrate only examined the complainant under Section 200 of the Cr.P.C.

4. It is further submitted that the mandatory provisions of Section 202 Cr.P.C. has not been complied with.

5. The order issuing process is as follows :-

"C.R. 107 of 2019

Order dated 12.05.2022

.....Complainant Susmita Balida Mondal is present by filing hazira. One witness namely Rajugopal Barman is present. He is examined in-chief under Section 200 Cr.P.C. and discharged.

Accordingly cognizance is taken for the offences punishable under sections 447/341/323/354/506/34 of the IPC against the accused persons.

Issues summons against the accused persons u/s. 447 /341 /323 /354 /506 /34 of IPC.

Complainant is directed to file requisites of notice upon the accused persons at once.

To 08.08.2022 for SR and appearance.

Sd/-

Chief Judicial Magistrate

Tamluk, Purba Medinipur....."

6. (i) In Birla Corporation Ltd. vs. Adventz Investments and Holdings (Criminal appeal No. 875, 876, 877 of 2019):-

The Supreme Court on 9th May, 2019 observed and held in respect of Section 202 Cr.P.C. as follows (The relevant paragraph are reproduced herein):-

"26. Complaint filed under Section 200 Cr.P.C. and enquiry contemplated under Section 202 Cr.P.C. and issuance of process:- Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 Cr.P.C. The purpose of the enquiry under Section 202 Cr.P.C. is to determine whether a prima facie case is made out and whether there is sufficient ground for

proceeding against the accused.

27. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 Cr.P.C. or whether the complaint should be dismissed by resorting to Section 203 Cr.P.C. on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 Cr.P.C., the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.

28. In National Bank of Oman v. Barakara Abdul Aziz and Another (2013) 2 SCC 488, the Supreme Court explained the scope of enquiry and held as under:-

"9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

29. In Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others (2015) 12 SCC 420, the scope of enquiry under Section 202 Cr.P.C. and the satisfaction of the Magistrate for issuance of process has been considered and held as under:-

"2. Chapter XV Cr.P.C. deals with the further procedure for dealing with "Complaints to Magistrate". Under Section 200 Cr.P.C, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the

complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person "for the purpose of deciding whether or not there is sufficient ground for proceeding". If, after considering the statements recorded under Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.

3. Chapter XVI Cr.P.C deals with "Commencement of Proceedings before Magistrate". If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) Cr.P.C for attendance of the accused."

30. Reiterating the mandatory requirement of application of mind in the process of taking cognizance, in Bhushan Kumar and Another v. State (NCT of Delhi) and Another (2012) 5 SCC 424, it was held as under:-

"11. In Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC 492 (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code."

31. Under the amended sub-section (1) to Section 202 Cr.P.C., it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.

32. By Cr.P.C. (Amendment) Act, 2005, in Section 202 Cr.P.C. of the Principal Act with effect from 23.06.2006, in sub-section (1), the words "...and shall, in a case

where accused is residing at a place beyond the area in which he exercises jurisdiction…" were inserted by Section 19 of the Criminal Procedure Code (Amendment) Act, 2005. In the opinion of the legislature, such amendment was necessary as false complaints are filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that persons residing at far off places are not harassed by filing false complaints making it obligatory for the Magistrate to enquire. Notes on Clause 19 reads as under:-

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that the innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

33. Considering the scope of amendment to Section 202 Cr.P.C., in Vijay Dhanuka and Others v. Najima Mamtaj and Others (2014) 14 SCC 638, it was held as under:-

"12. ….The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

Since the amendment is aimed to prevent persons residing outside the jurisdiction of the court from being harassed, it was reiterated that holding of enquiry is mandatory. The purpose or objective behind the amendment was also considered by this Court in Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another (2017) 3 SCC 528 and National Bank of Oman v. Barakara Abdul Aziz and Another (2013) 2 SCC 488.

34. 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 application of mind has to be indicated by disclosure of mind on the satisfaction.

Considering the duties on the part of the Magistrate for issuance of summons to accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman, this Court held as under:- "22. ....the Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482 Cr.PC. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

(ii) In **Sunil Todi and Ors. vs State of Gujarat and Anr., Criminal Appeal No. 1446 of 2021, on 03.12.2021**, held:-

"31. The second submission which has been urged on behalf of the appellants turns upon Section 202 CrPC, which is extracted:

"202. Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1 [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone 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, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,- (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on

oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

32. .....

33. The provisions of Section 202 which mandate the Magistrate, in a case where the accused is residing at a place beyond the area of its jurisdiction, to postpone the issuance of process so as to enquire into the case himself or direct an investigation by police officer or by another person were introduced by Act 25 of 2005 with effect from 23 June 2006. The rationale for the amendment is based on the recognition by Parliament that false complaints are filed against persons residing at far off places as an instrument of harassment. In Vijay Dhanuka v. Najima Mamtaj20, this Court dwelt on the purpose of the amendment to Section 202, observing:

"11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process 'in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' and

thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far-off places in order to harass them. The note for the amendment reads as follows:

'False complaints are filed against persons residing at far-off places simply to harass them. In order to see that innocent persons are not harassed by

unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused'

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

34. This Court has held that the Magistrate is duty bound to apply his mind to the allegations in the complaint together with the statements which are recorded in the enquiry while determining whether there is a prima facie sufficient ground for proceeding. In Mehmood UI Rehman v. Khazir Mohammad Tunda21, this Court followed the dictum in Pepsi Foods Ltd. v. Special Judicial Magistrate22, and observed that setting the criminal law in motion against a person is a serious matter. Hence, there must be an application of mind by the Magistrate to whether the allegations in the complaint together with the statements recorded or the enquiry conducted constitute a violation of law. The Court observed:

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."

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"22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

These decisions were cited with approval in Abhijit Pawar v. Hemant Madhukar Nimbalkar23. After referring to the purpose underlying the amendment of Section 202, the Court observed:

"25. ... the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]..."

35. While noting that the requirement of conducting an enquiry or directing an investigation before issuing process is not an empty formality, the Court relied on the decision in Vijay Dhanuka which had held that the 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 enquiry envisaged under Section 202 of the Code.

36. In Birla Corporation Ltd. v. Adventz Investments and Holdings24, the earlier decisions which have been referred to above were cited in the course of the judgment. The Court noted:

"26. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 CrPC or whether the complaint should be dismissed by resorting to Section 203 CrPC on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused."

Hence, the Court held:

"33. 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 application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to the accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]..."

The above principles have been reiterated in the judgment in Krishna Lal Chawla v. State of U.P25."

The Court considered the same later, in the light of a proceedings under Section 138/141C N.I. Act.

(iii) The Supreme Court in **Shiv Jatia Vs Gian Chand Malick & Ors., Criminal Appeal No. 776 of 2024 with Criminal Appeal 777 of 2024, on 23rd February, 2024**, held:-

"8. In this case, there is no dispute that some of the accused, including three of the appellants, were residing outside the territorial jurisdiction of the Court of the learned Magistrate before whom the complaint was filed by the 1 st respondent-complainant. Sub-section (1) of Section 202 of the Cr.PC was amended

with effect from 23 rd June 2006 by the Act No.25 of 2005. Subsection (1) of Section 202 of the Cr.PC, as amended, reads thus:

"202. Postponement of issue of process.- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone 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, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200."

(emphasis added)

The portion starting from "and" and ending with "his jurisdiction" was added with effect from 23 rd June 2006. The requirement of postponing the issue of the process was introduced on 23rd June 2006 which is applicable only when one of the accused stays outside the jurisdiction of the court.

The said requirement is held to be mandatory. The mandatory requirement of postponing the issue of the process because the accused was residing at a place beyond the area where the learned Magistrate exercises his jurisdiction was not applicable when the complaint was filed in 2004. The mandate introduced with effect from 23 rd June 2006 was not applicable on the date of filing of the complaint. We are not examining whether the amended provision will apply to a complaint filed before 23rd June 2006 in which the order of issue of process has been passed after 23 rd June 2006.

9. We may note here that when the order dated 15 th December 2011, calling for the report from the concerned Police Station under Section 202 of the Cr.PC was passed, the learned Magistrate had already recorded the evidence of the 1st respondent-complainant and two witnesses-S.C.Mahto (CW1) and Rajiv Kumar (CW3). Therefore, after recording the evidence of the three witnesses, the learned Magistrate was not satisfied that the material on the record of the complaint, including the testimony of the three witnesses, was sufficient to pass the

summoning order. That is why the learned Magistrate had called for the report under Section 202 of the Cr.PC.

10. Initially, some controversy was raised as the order dated 17th December 2012, passed by the learned Magistrate, records that a report was received. Therefore, we called for a soft copy of the record of the complaint. The record reveals that the report referred to in the order dated 17 th December 2012 was submitted by the Police, seeking two more months to file the report. It is an admitted position that on record of the complaint, the report made by the Police under Section 202 of the Cr.PC was not received. In any case, Shri Kanwardeep Kaur, IPS, Senior Superintendent of Police, Union Territory of Chandigarh, in the affidavit filed on 24 th October 2023, categorically stated that the Police did not file the report under Section 202 of the Cr.PC till 16 th July 2013, when the summoning order was issued by the learned Magistrate.

11. After recording the evidence of the three witnesses and perusing the documents on record, the learned Magistrate passed the order calling for the report under Section 202 of the Cr.PC. He postponed the issue of the process. The learned Magistrate ought to have waited until the report was received. He had an option of conducting an inquiry contemplated by subsection (1) of Section 202 of the Cr.PC himself due to the delay on the part of the Police in submitting the report. But, he did not exercise the said option. For issuing the order of summoning, the learned Magistrate could not have relied upon the same material which was before him on 15th December 2011 when he passed the order calling for the report under Section 202 of the Cr.PC. The reason is that, obviously, he was not satisfied that the material was sufficient to pass the summoning order. It is not the case of the 1st respondent complainant that when the learned Magistrate passed the order dated 16th July 2013, there was some additional material on record. At least, the order of the learned Magistrate does not say so. The order does not even consider the earlier order dated 15th December 2011 calling for the report under subsection (1) of Section 202 of the Cr.PC. The order issuing process has drastic consequences.
Such orders require the application of mind. Such orders cannot be passed casually. Therefore, in our view, the learned Magistrate was not justified in passing the order to issue a summons."

(iv) In **Vijay Dhanuka Etc vs Najima Mamtaj Etc, Criminal Appeal Nos. 678-681 of 2014, on 27 March, 2014,** held:-

"…… the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section

2(g) of the Code, the same reads as follows:

"2. xxx xxx xxx

(g)"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

xxx xxx xxx"

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 or 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."

7. In the present case, admittedly only the complaint has been examined. No witnesses were examined in this case.

8. Thus, the order under revision is clearly under Section 200 Cr.P.C. and not 202 Cr.P.C., even though the petitioner admittedly does not have a local address, within the jurisdiction of the Court issuing process.

9. Thus the order dated 12.05.2022 passed by the learned Chief Judicial Magistrate, Tamluk at Purba Medinipur in C.R. Case No. 107 of 2019, being not in accordance with law is liable to be set aside.

10. CRR 1158 of 2023 is disposed of.

11. The order dated 12.05.2022 passed by the learned Chief Judicial Magistrate, Tamluk at Purba Medinipur in C.R. Case No. 107 of 2019, is hereby set aside.

12. The Learned Magistrate shall hear the matter afresh, duly complying with the provision of Section 202(2), Code of the Criminal Procedure, by conducting an inquiry as per the relevant provisions and pass an order in accordance with law.

13. No order as to costs.

14. All connected applications stand disposed of.

15. Interim order, if any, stands vacated.

16. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

17. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.