

22.09.2022

Sl. No. 10

Srimanta

Ct.No. 42

CRR/3550/2022

In the matter of : **Soumen Adhikary**

...petitioner.

Mr. Apalak Basu, Adv.,
Mr. Indranil Roy Chowdhury, Adv.,
Ms. Moumita Pandit, Adv.,
Mr. Nazir Ahmed, Adv.

...for the petitioner.

The petitioner being the accused of CR Case No. 197/2022 has filed the instant revision assailing the order dated 21st March, 2022 by virtue of which the Learned Chief Judicial Magistrate took cognizance of offence and subsequent orders dated 19th May, 2022 and 31st August, 2022 passed by the Learned Judicial Magistrate, 2nd Court at Berhampore, Murshidabad being illegal, inoperative and *void ab initio*. It is submitted by the Learned Advocate for the petitioner that the Learned Chief Judicial Magistrate vide order dated 21st March, 2022 took cognizance of offence under Sections 448/323/420/405/506/34 of the Indian Penal Code on a printed format of order by filling up the vacant gaps in violation of Rule 183 of the Calcutta High Court Criminal (Subordinate) Rules, 1985 and the decision of this Court in ***Sarmistha Chowdhury & Anr. -Vs.- State of West Bengal & Ors.*** reported in **2018 Cr. L. J. 359**.

The Learned Advocate for the petitioner has also raised an issue as to whether the requirement of Section 200 is said to be complied with directing the complainant to file his statement on affidavit under the provision of Order 18 Rule 4 of the Code of Civil Procedure. In other words, the issue that requires to be considered in the instant revision is whether statement of solemn affirmation upon oath under Section 200

of the Code of Criminal Procedure can be said to be complied with obtaining an affidavit from the complainant.

The impugned order dated 19th May, 2022 passed by the Learned Judicial Magistrate, 2nd Court, Berhampore runs thus:-

“Complainant files put up petition. The record is put up today.

Complainant also files another petition and an affidavit-in-chief.

SA of the complainant, Ayan Karmakar is recorded under Section 200 of the Code of Criminal Procedure.

To date for SR.”

The order dated 19th May, 2022 thus suggests that there is no satisfaction arrived at by the Learned Magistrate as to whether the complainant has been able to make out a *prima facie* case in support of his allegation containing commission of certain offences the cognizance of which was taken by the Learned Judicial Magistrate vide his order dated 21st March, 2022. There is no direction also to issue process against the accused/petitioner without such direction the Learned Magistrate issued the next date for SR (Service Return).

Prima facie, the orders dated 21st March, 2022 passed by the Learned Chief Judicial Magistrate is illegal. Secondly, the subsequent orders dated 19th May, 2022 and 31st August, 2022 passed by the Learned Judicial Magistrate, 2nd Court at Berhampore are also illegal. Therefore, the instant revision is admitted. Petitioner is directed to serve notice upon the opposite party under registered speed post with acknowledgement due and file affidavit-of-service within two weeks after Vacation. Further proceeding in connection with CR 197/2022 be stayed till 31st December, 2022.

(Bibek Chaudhuri, J.)