*CRIMINAL REVISION*

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**Present: The Hon'ble Justice S.P. Talukdar**

**Judgment on : 25.03.2010.**

**C.R.R. No. 1997 of 2008**
**with**
**C.R.R. No. 1998 of 2008**
**with**
**C.R.R. No. 1999 of 2008**
**Biswanath Maheswari**
**Vs.**
**M/s. Navbharat Tea Processing Private Limited & Anr.**

**POINTS:**

Amendment----Quashing of the proceeding---- Dishonor of cheque ------Proceeding Criminal case started against the Petitioners-----Amendment of Section 202 of Criminal Procedure Code, effect of----Magistrate, if can issue process when accused persons reside outside the territorial jurisdiction of the Courts----Interpretation of Statutes, if absurdity is to be avoided-----Negotiable Instruments Act, Ss. 138/ 141, Code of Criminal Procedure, Ss. 202,205, 317.

**FACTS:**

The Petitioner and Respondent had a business deal with each other. Complainant company despatched tea valued at Rs. 3,94,000/- to the accused No. 1 company and accordingly raised bill for the said amount. Accused No. 1 company issued one post dated cheque for Rs. 3,94,000/- only under the signature of accused No. 3 to the knowledge of the other accused persons with clear promise and assurance that upon presentation of the said cheque, the same would definitely be honoured.On presentation, It was returned dishonoured with endorsement 'insufficient fund'. The complainant company was then asked to present the cheque again in July, 2007. On the basis of such assurance and with the legitimate expectation, the cheque was presented by the complainant company to its banker. It too bounced vide bank intimation dated 31st July, 2007.

The accused No. 1 company as well as its H directors were duly served with the legal notice dated 10th August, 2007.

The accused persons committed offences under Section 138 read with Section 141 of the Negotiable Instruments Act. The cause of action arose on the failure of the accused persons to make arrangement of fund covered by the cheque in question after the expiry of period of 15 days prescribed for payment in the notice dated 10th August, 2007, posted on 14th August, 2007, i.e. to say 30th August, 2007 and the said cause of action still continues. Learned Magistrate by

order dated 28th September, 2007 referred to such petition of complaint and the affidavit-in-chief, which was filed. On perusal of the complaint, Learned C.J.M., Jalpaiguri, transferred the case to the Learned 1st Court of J.M., Jalpaiguri for disposal.
By Order dated 8th October, 2007, Learned Court directed issuance of process against the accused persons and fixed a date for service return and appearance. At this stage, one of the accused persons, filed the instant application praying for quashing of the proceeding now pending before the Learned Trial Court where it was stated that the crux of the controversy is whether the Learned Court of Magistrate could straightway direct issuance of process against an accused person, who admittedly resides beyond the territorial jurisdiction of the said Court.

**HELD:**

Learned Magistrate need not postpone the issue of process against the accused, even if the accused is residing at a place outside his jurisdiction, if allegations in the complaint and examination of the complainant *prima facie* appears sufficient to proceed and the facts constituting an offence under Section 138 of the Negotiable Instruments Act are disclosed in the complaint.

PARA--18

In a case arising out of an application under Section 138 of the Negotiable Instruments Act, question of directing any investigation by the police can hardly arise. The Court directs issuance of process in a case under Section 138 of the Negotiable Instruments Act on perusal of the allegations contained in the complaint and the documents accompanying the same and on being *prima facie* satisfied with the establishment of a *prima facie* case.

PARA----33

There may be innumerable instances throughout the length and breadth of our country where two adjacent houses fall within the territorial jurisdictions of two separate sub-divisions, if not districts. In order to protect the people from the harassment which might be caused by mischievous litigants, there is need for exercise of caution as well. If a complainant has genuine grievances against his immediate neighbour but just because the house of that immediate neighbour falls within the territorial jurisdiction of another Court of Magistrate, the Court is compulsorily required to pass through Section 202 of Criminal Procedure Code and mandatorily refer the complaint for investigation under sub-section (1) of Section 202 of Criminal Procedure Code, the complainant/victim will be put into serious prejudice. The Court does not think that this could be the intention of the legislature. Moreover, the Code of Criminal Procedure also contains sufficient safeguards against false and frivolous complaints. Section 205 of the Criminal Procedure Code empowers a Magistrate to dispense with personal attendance of accused. Section 317 of the Criminal Procedure Code relates to provision for inquiries and trial being held in the absence of accused in certain cases. Though such reference to Section 205 or 317 of the Criminal Procedure Code may not have much relevance for adjudication of the dispute raised in the present application, it is necessary for appreciation of the entire matter in its proper perspective.

PARA---40

The basic principle of interpretation of statute is that a provision of law should not be so interpreted so as to lead to absurdity. The words and expressions used under section 202(1) of Criminal Procedure Code are quite plain and unambiguous. Those, in the opinion of the court , do not deserve to be stretched to a point that the same adversely affects the interest of justice. There should be no attempt to read something more than what meets the eyes.

PARA ----41

**CASES CITED:**

**S.K. Bhowmik Vs. S.KI. Arora & Anr., 2007 (4) R.C.R. (Criminal) 650**.

**Parshotam Lal Vadera Vs. Satyanarayan Sadangi 2008 (1) E.Cr.N.292**,

**Prem Kaur @ Premo Vs. Balwinder Kaur, E.Cr.N. 2009 (3) 1037 (PUN)**.

**D. Kannammal Vs. Tmt. Renuga Palanisamy, 2008 (2) E.Cr. N. 587**

**Muhammed Basheer & etc. Vs. The State of Kerala & Anr., 2009(2) AICLR (Ker) 230**

**K. T.Joseph Vs. State of Kerala & Anr., E.Cr.N 2009(3) 1046 (SC)**,

**P. C. Chandra Jewellery Apex (Pvt.) Limited Vs State of West Bengal, 2008 (2) E Cr.N1566**

**Rameshwar Jute Mills Ltd. Vs. Sushil Kumar Daga & Ors., 2009 (2) CHN 138**

**State of Gujarat & Ors. Vs. Dilipbhai Nathjibhai Patel & Anr., 1998 SCC (Cri) 737**

**State of Gujarat & Ors. Vs. Dilipbhai Nathjibhai Patel & Anr., 1998 SCC (Cri) 737**

**R.S. Nayak Vs. A.R. Antulay, 1984 SCC (Cri) 172**

**Anit Das Vs. State of Bihar, 2001 SCC (Cri) 1393**,

**S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr., 2005 SCC (Cri) 1975**

For the Petitioner : Mr. Amit Bhattacharya,
Mr. Ayan Bhattacharya.
For the Private Opposite Party : Mr. Sandipan Ganguly,
Mr. Partha Pratim Sarkar.
For the State : Mr. Swapan Kumar Mallick.
For the State : Mr. Subhasish Pachchal.
(in CRR 1999/08)

**THE COURT:**
1.The present three revisional applications relate to identical facts and points of law and accordingly have been heard at a time.

2.In C.R.R. No. 1997 of 2008, the petitioner, by filing an application under Section 482 of the Code of Criminal Procedure, has prayed for quashing of the proceeding of C.R. Case No. 400 of 2007 under Sections 138/141 of the Negotiable Instruments Act now pending before the 1st Court of Judicial Magistrate, Jalpaiguri.

3.Grievances of the petitioner, as ventilated by learned Counsel, may briefly be stated as follows:-

The present respondent No. 1 and petitioner had business deal with each other. Complainant company despatched tea valued at Rs. 3,94,000/- to the accused No. 1 company covered by necessary papers and accordingly raised bill for the said amount being the value of 'made tea'. Accused No. 1 company towards payment of the said amount being their legally enforceable debt and subsisting liabilities issued one post dated cheque bearing No. 307974 dated 14.3.2007 for Rs. 3,94,000/- only drawn on UTI Bank, Kolkata under the signature of accused No. 3 to the knowledge of the other accused persons with clear promise and assurance that upon presentation of the said cheque, the same would definitely be honoured. The cheque was accordingly presented by the complainant company to its banker i.e., Centurion Bank of Punjab Limited, Kolkata for encashment. It was returned dishonoured with endorsement 'insufficient fund'. The complainant company thereafter contacted the accused persons who requested the complainant to bear with them as they were facing financial hardship. The complainant company was asked to present the cheque again in July, 2007. On the basis of such assurance and with the legitimate expectation, the cheque was presented by the complainant company to its banker i.e., Allahabad Bank, Jalpaiguri branch on 30th July, 2007. It too bounced vide bank intimation dated 31st July, 2007 showing the reason that the account had been closed. This reflects the dishonest intention of the accused persons. The complainant thereafter issued demand notice through its lawyer dated 10th August, 2007 requesting the accused persons to arrange payment of the said amount of Rs. 3,94,000/-. The accused No. 1 company despite receipt of the said notice did not make any arrangement for payment of the said amount. It rather resorted to evasive replies and thereby attempted to escape the penal liabilities. The requirement issuing of notice in terms of clause (b) of proviso to Section 139 of the N.I. Act was duly complied with and notices were sent at the correct address of the drawers of the cheque by registered speed post. Thus, the accused No. 1 company as well as its H directors were duly served with the legal notice dated 10th August, 2007.

4.Thus, the accused persons committed offences under section 138 read with section 141 of the N.I. Act. The cause of action arose on the failure of the accused persons to make arrangement of fund covered by the cheque in question after the expiry of period of 15 days prescribed for payment in the notice dated 10th August, 2007, posted on 14th August, 2007, i.e. to say 30th August, 2007 and the said cause of action still continues.

5. Complainant, in such circumstances, approached the learned Court for taking cognizance under section 138 read with Section 141 of the N.I. Act., 1881, as amended by Act No. 55 of

2002 and prayed for issuance of summons upon the accused persons and their trial in accordance with law.

6.Learned Magistrate by order dated 28th September, 2007 referred to such petition of complaint and the affidavit-in-chief, which was filed. On perusal of the complaint, learned C.J.M., Jalpaiguri, transferred the case to the learned 1st Court of J.M., Jalpaiguri for disposal.

7.On 8th October, 2007, learned transferee Court examined the complaint on S.A. under section 200 of the Cr.P.C. Thereafter, on perusal of the complaint, initial deposition and the affidavit-in-chief as well as the original documents and of course, after hearing learned Counsel for the complainant satisfied itself as to the existence of a *prima facie* case against all the accused persons for proceeding under section 138 read with Section 141 of the N.I. Act. By the said order dated 8th October, 2007, learned Court directed issuance of process against the accused persons and fixed a date for service return and appearance. Subsequently, one of the accused persons surrendered in Court and was let out on bail. The remaining accused persons being Nos. 1, 2 & 4 sought for time to enable them to present themselves. Application was also filed under section 205 of the Cr.P.C. seeking exemption from personal appearance. The said accused person Nos. 1, 2 & 4 were subsequently let out on bail. The learned Court fixed a date for hearing of the application under section 205 of Cr.P.C. At this stage, one of the accused persons, namely, Biswanath Maheswari, filed the instant application praying for quashing of the proceeding now pending before the learned Trial Court.

8.Mr. Bhattacharya, appearing as learned Counsel for the petitioner, submitted that continuation of further proceeding of the case will be an abuse of the process of Court and as such, sought for quashing of the same. The main point raised for the petitioner and accused Nos. 2, 3 and 5 is that there is no averment in the petition of complaint as to the specific role of the present petitioner and the allegations made in the application are bald demanding interference by this Court.

9.At the time of hearing of the revisional application, learned Counsel, however, referred to a different aspect, which according to him strikes the case at its root. According to him, cognizance taken by the learned Court and the orders passed from time to time are not legally sustainable. This, according to him, was due to non-compliance of Section 202 of the Cr.P.C. After hearing learned Counsel for both the parties and taking into consideration all relevant materials, it is found that the crux of the controversy is whether the learned Court of Magistrate could straightway direct issuance of process against an accused person, who admittedly resides beyond the territorial jurisdiction of the said Court.

10.It was submitted on behalf of the petitioner that in view of the amendment brought to Section 202 of the Code of Criminal Procedure, a Court of Magistrate is under legal compulsion to postpone the issue of process and direct investigation as provided under subsection (1) of Section 202 before issuing process in respect of such an accused person residing beyond its territorial jurisdiction.

11.Significantly enough, learned Counsel, appearing for the private opposite party, did not choose to assail the proposition made by the learned Counsel for the petitioners in this regard. There had been no serious challenge thrown by Mr. Swapan Mallick or by Mr. Panchchal, who represented the O.P./State.

12.Section 202 of the Criminal Procedure Code after amendment, which took effect from 23rd June, 2006, reads as follows:-

"**202. Postponement of issue of process.** – (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized 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 office complained of is triable exclusively by the Court of Sessions; 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 witness 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."

13.Mr. Bhattacharya in support of his contention submitted that the relevant law has undergone sea change in view of the amendment of Section 202 of the Cr.P.C. which took effect from 23rd June, 2006. It was contended that if the case involves an accused person residing outside the territorial jurisdiction of the learned Court, there is no option left open for the learned Court but to postpone the issue of process and direct 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. Mr. Bhattacharya submitted that in the present case, learned Magistrate ignored the aforesaid provision of law and despite being aware of the fact that the present petitioner who had been made one of the accused persons in the said case is residing in the State of Punjab, directed issuance of process without taking any recourse to Section 202 of Cr.P.C.

14.He first referred to the decision of learned Single Bench of the Punjab and Haryana High Court in the case between **S.K. Bhowmik Vs. S.KI. Arora & Anr., as reported in 2007 (4) R.C.R. (Criminal) 650**. This was in support of his contention that Magistrate cannot issue process to an accused who resides outside his territorial jurisdiction without holding enquiry under Section 202 of Cr.P.C. Deriving support from the said decision, Mr. Bhattacharya contended that after amendment of Section 202 Cr.P.C., it is mandatory upon Magistrate to hold an enquiry under Section 202 (as amended) to find out whether or not there was sufficient ground for proceeding against the accused.

15.It may, however, be mentioned that in the case under reference, there was a consensus between the counsel appearing for the petitioner and contesting respondent that enquiry would now be mandatory in a case where an accused person is found to be residing beyond the jurisdiction of a Magistrate dealing with the case.

16.Referring to the Single Bench decision of the Orissa High Court in the case between **Parshotam Lal Vadera Vs. Satyanarayan Sadangi, as reported in 2008 (1) E.Cr.N. 292**, Mr. Bhattacharya submitted that the intention of the legislature must be given precedence and according to him, the said provision had been inserted in order to obviate vexatious litigation and harassment caused to innocent persons residing beyond the territorial jurisdiction of the Court by unscrupulous litigants.

17.Reference was also made to another Single Bench decision of the Punjab and Haryana High Court in the case between **Prem Kaur @ Premo Vs. Balwinder Kaur, as reported in E.Cr.N. 2009 (3) 1037 (PUN)**.

18.In the case between **D. Kannammal Vs. Tmt. Renuga Palanisamy, as reported in 2008 (2) E.Cr. N. 587**, the learned Single Bench of the Madras High Court, however, held that the amended provision contained under section 202(1) of the Cr.P.C. may not apply in respect of cases filed for an offence under section 138 of the N.I. Act. The learned Court in the said case observed that learned Magistrate need not postpone the issue of process against the accused, even if the accused is residing at a place outside his jurisdiction, if allegations in the complaint and examination of the complainant *prima facie* appears sufficient to proceed and the facts constituting an offence under section 138 of the N.I. Act are disclosed in the complaint.

19.In course of submission, reference was also made to the decision in the case between **Muhammed Basheer & etc. Vs. The State of Kerala & Anr., as reported in 2009(2) AICLR (Ker) 230** wherein it was held omission to conduct an enquiry under Section 202 Cr.P.C. cannot be said to vitiate the cognizance taken and the issue of process under Section 204 of the Cr.P.C.

20.Though reference was made to an Apex Court decision in the case between **K. T. Joseph Vs. State of Kerala & Anr., as reported in E.Cr.N 2009(3) 1046 (SC)**, I do not think that the said decision can at all be attracted for adjudicating upon the issue raised in

Jconnection with the present application.

21.In the case between **P. C. Chandra Jewellery Apex (Pvt.) Limited Vs. State of West Bengal, as reported in 2008 (2) E Cr. N 1566**, the learned Single Bench of this Court observed :

"So the combined reading of Section 202 of the Code of Criminal Procedure as originally framed by the legislature and subsequently incorporated by way of amendment would be that generally the application of Section 202 will be at the discretion of the Magistrate only in cases where the learned Magistrate after recording the evidence in terms of Section 200 of the Code of Criminal Procedure is not in a position to decide either to dismiss the complaint in terms of Section 203 of the Code of Criminal Procedure or to issue process in terms of Section 204 of the Code of Criminal Procedure."

22.This issue fell for consideration in another case before the same learned Bench. It was the case between **Rameshwar Jute Mills Ltd. Vs. Sushil Kumar Daga & Ors., as reported in 2009 (2) CHN 138**. The learned Court in the said case held that "there is nothing in Section 202 or in the amended provision which controls the language of Section 200 of the Code. The amendment was effected and applies only in cases where the issuance of process against the accused persons are postponed by the learned Magistrate." Learned Single Bench of this Court after referring to a number of cases decided by the Apex Court concluded by observing as follows :-

" 1. The application of Section 202 of the Code is discretionary and the same will come into operation only in cases where the Magistrate in his discretion decides to postpone the issue of process.

2. In cases where the learned Magistrate postpones the issue of process then it is mandatory on his part to inquire in case of accused persons who are residing outside the jurisdiction of the Court."

23.Learned Single Bench extensively quoted from various other judgments and held that following the language of Section 465 of Cr.P.C., non-compliance of procedural formality, unless it casts serious prejudice, cannot and does not by itself affect a criminal case. Procedure appears as an aid to substantive justice and the substantive justice so far as the Criminal Court is concerned is to decide whether an offence alleged has been committed by the accused persons. It was further held that over emphasis or over reliance upon the compliance of the procedural law may be counter productive and instead of advancing the cause of justice, the same may operate as an hindrance to the cause of substantial justice.

24.The Apex Court in the case between **State of Gujarat & Ors. Vs. Dilipbhai Nathjibhai Patel & Anr., as reported in 1998 SCC (Cri) 737**, referred to an earlier decision in the case between Union of India Vs. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323 wherein it was held :

"It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

25.Mr. Bhattacharya on behalf of the petitioner referred to many other decisions of various Courts and particularly of the Apex Court. But the same do not appear to have much relevance so far the controversy raised in the present case is concerned.
As mentioned earlier, Mr. Ganguly, appearing as learned Counsel for the private opposite party, did not effectively oppose the legal proposition as contended on behalf of the petitioner. This is with reference to the change in the legal position in view of the amendment of Section 202 of the Cr.P.C. He, however, submitted that so far the cases under Negotiable Instruments Act are concerned, there could be nothing left for any kind of investigation under section 202 of Cr.P.C.

26.Referring to the decision of the Apex Court in the case between **State of Gujarat & Ors. Vs. Dilipbhai Nathjibhai Patel & Anr., as reported in 1998 SCC (Cri) 737**, it was submitted that a Court of Magistrate is to see that a complaint contains material to enable the Magistrate to make up his mind for issuing process. In the said case, the Apex Court held that the normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in the statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a company, extends criminal liability for dishonour of a cheque to officers of the company.

27.In the case between **R.S. Nayak Vs. A.R. Antulay, as reported in 1984 SCC (Cri) 172**, the Apex Court held :

"The aids which Parliament availed of such as report of a special committee preceding the enactment, existing state of law, the environment necessitating enactment of the legislation, and the object sought to be achieved, are useful to deciphering the real intention of the Parliament and therefore cannot be denied to the court. Therefore, reports of the committee which preceded the enactment of a legislation, reports of joint parliamentary committee, report of a commission set up for collecting information leading to the enactment are permissible external aids to construction."

28.It was, however, clearly and categorically observed that the construction which

would advance the object of the Act is to be preferred. It is necessary to keep in mind that the meaning of the words and expressions used in a statute ordinarily take their colour from the context in which they appear. Construction which leads to absurdity must, however, be avoided.

29.Deriving inspiration from the decision of the Apex Court in the case between **Anit Das Vs. State of Bihar, as reported in 2001 SCC (Cri) 1393**, it was submitted by Mr. Ganguly that Supreme Court does not decide matters which are only of academic interest on the facts of a particular case.

30.Before proceeding with the present controversy any further, I think it necessary to mention that the amendment, as referred to earlier, was given effect from 23rd June, 2006. The purpose behind such amendment can be noticed from the draft accompanying the amendment. This is as follows :
"*Clause 19*. – 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."

31.Thus, it appears that the said provision has been inserted in order to obviate vexatious litigation and harassment caused to innocent persons residing beyond the territorial jurisdiction of the Court by unscrupulous litigants.

32.In the case of D. Kannammal (Supra), the learned Court in the context of a complaint under section 138 of the Negotiable Instruments Act held that the amended provision contained under section 202(1) of the Cr.P.C. may not apply in respect of cases filed for an offence under section 138 of the Negotiable Instruments Act.

33.In fact, Mr. Ganguly, appearing as learned Counsel for the O.P./complainant, submitted that in a case arising out of an application under section 138 of the N.I. Act, question of directing any investigation by the police can hardly arise. Going a step further, it can also be said that question of entrusting the enquiry to some other person does not arise either. Needless to mention that before filing a complaint under section 138 of the N.I. Act, certain legal steps as contemplated under the aforesaid section are required to be fulfilled. Documents in support of the claim of fulfilment of such requirement are also to be filed along with the complaint. The Court directs issuance of process in case under section 138 of the N.I. Act on perusal of the allegations contained in the complaint and the documents accompanying the same and on being *prima facie* satisfied with the establishment of a *prima facie* case.

34.The crux of the controversy raised in the instant three applications is whether in view of the amendment brought under section 202(1) of the Cr.P.C. which came into effect from 23rd June, 2006, is it mandatory on the part of the Magistrate to postpone issue of process

when an accused person is found to be residing outside the territorial jurisdiction of the said learned Court and thereafter either enquire 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.

35.It may be contended that sub-section (1) has been amended 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. It is argued that this has been done to see that innocent persons are not harassed by unscrupulous persons.

36.For proper appreciation of the entire issue, it may be mentioned that Section 190 of the Cr.P.C. deals with "cognizance of offences by Magistrates". Sub-section (1) of Section 190 of the Code lays down that any Magistrate of the first class may take cognizance of any offence upon receiving a complaint of facts which constitute such offence. Section 192 enables any Chief Judicial Magistrate to make over the case for inquiry or trial after taking cognizance of an offence to any competent Magistrate subordinate to him.
Chapter XV of the Code deals with the complaints to Magistrates. Section 200 of the same reads :

"**200. Examination of complainant.** – A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses preset, 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."

37.Section 203 of the Code authorizes dismissal of complaint by a Magistrate when after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Court is of opinion that there is no sufficient ground for proceeding. The word used there is 'or'. This by no stretch of imagination suggests that even where a proposed accused person resides outside territorial jurisdiction of the Court of Magistrate, there can be any legal compulsion for any kind of enquiry on investigation under section 202 of Cr.P.C. Thus, for dismissal of

complaint, what is essential for the Magistrate is to form an opinion after considering the statements on oath of the complainant and the witnesses that there is no sufficient ground for proceeding.
38.Significantly enough, Section 204 of the Cr.P.C. which deals with 'issue of process', also remains unaltered. Thus, when there is no sufficient ground for proceeding, the Magistrate may dismiss a complaint and where there is sufficient ground for proceeding, the Magistrate may issue process under section 204 of the Cr.P.C. No restriction has been sought to be made in respect of the accused persons residing outside the territorial jurisdiction of any particular Court of Magistrate.

39.True, such amendment may go a long way to protect the unfortunate victims against unscrupulous complainants. But it is difficult to ignore the fact that the vast country of India does not only comprise of many States and Union Territories, those again comprise of many districts, which again have many sub-divisions, if not '*Chowki/Block*'. The Magistrate in charge of a particular sub-division can only exercise jurisdiction in respect of the Territory within the said sub-division.

40.There may be innumerable instances throughout the length and breadth of our country where two adjacent houses fall within the territorial jurisdictions of two separate sub-divisions, if not districts. In order to protect the people from the harassment which might be caused by mischievous litigants, there is need for exercise of caution as well. If a complainant has genuine grievances against his immediate neighbour but just because the house of that immediate neighbour falls within the territorial jurisdiction of another Court of Magistrate, the Court is compulsorily required to pass through Section 202 of Cr.P.C. and mandatorily refer the complaint for investigation under sub-section (1) of Section 202 of Cr.P.C., I am afraid, the complainant/victim will be put into serious prejudice. I do not think that this could be the intention of the legislature. Moreover, the Code of Criminal Procedure also contains sufficient safeguards against false and frivolous complaints. Section 205 of the Cr.P.C. empowers a Magistrate to dispense with personal attendance of accused. Section 317 of the Cr.P.C. relates to provision for inquiries and trial being held in the absence of accused in certain cases. Though such reference to Section 205 or 317 of the Cr.P.C. may not have much relevance for adjudication of the dispute raised in the present application, I think it necessary for appreciation of the entire matter in its proper perspective.

41.After taking into consideration the various provisions under Chapter XV of the Code, I do not find any reason as to why a learned Court if *prima facie* satisfied as to the existence of an offence cannot straightway proceed from Section 200 to Section 204 of Cr.P.C. I do not think it necessary to compulsorily pass through Section 202 so as to reach either Section 203 or Section 204 of Cr.P.C. It is only when a Court of Magistrate fails to satisfy itself regarding the existence of a *prima facie* case but does not think that such a case deserves to be dismissed then and there under section 203 of Cr.P.C., a Court can postpone the issue of process and direct further investigation under section 202(1) of Cr.P.C. And, if the accused person resides at a place outside the territorial jurisdiction of that Court of Magistrate, it is for the said learned Court to enquire 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.
It is possibly needless to add that such observations are made keeping in mind the theory of harmonious construction. It is also necessary to hold that a provision of law should not be so interpreted so as to make it unrealistic. The manner in which Mr. Bhattacharya has sought to extend the scope and ambit of amendment of Section 202 of Cr.P.C, I am afraid, may lead to an absurd state of affairs. The basic principle of interpretation of statute is that a provision of law should not be so interpreted so as to lead to absurdity. The words and expressions used under section 202(1) of Cr.P.C. are quite plain and unambiguous. Those, in my opinion, do not deserve to be stretched to a point that the same adversely affects the interest of justice. There should be no attempt to read something more than what meets the eyes.

42Accordingly, after hearing learned Counsel for both the parties and in the light of discussion as made hereinbefore, I find it difficult, if not impossible, to appreciate the grievances, as ventilated on behalf of the petitioner. The instant three applications being C.R.R. No. 1997 of 2008, C.R.R. No. 1998 of 2008 and C.R.R. No. 1999 of 2008 be dismissed. Interim order of stay, if any, stands vacated. Learned Magistrate is hereby directed to proceed with the cases under reference in accordance with law and of course, in the light of observation made hereinabove.

Criminal department is directed to supply certified copy of this judgment, if applied for, as expeditiously as possible.
**(S.P. Talukdar, J**