

09.01.2023

Item No.14
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 674 of 2021

**M/s Karan Kothari Jewellers Pvt. Ltd
versus
State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

Mr. Kishore Mukherjee,
Mr. A. Dey ... For the Petitioner.

Mr. Vipul Kundalia,
Mr. Anurag Roy,
Ms. Uneaza Ali ... For the Opposite Party No.2.

This revisional application was preferred challenging the proceedings being case no. C-799 of 2018 pending before the learned Judicial Magistrate, 2nd Court, Barasat under Sections 277A and 278B of the Income Tax Act, 1961.

Learned advocate appearing for the petitioner submits that without any enquiry being conducted under Section 202 of the Code of Criminal Procedure, the learned Magistrate straightway issued summons and as such, the order issuing process must be set aside.

Mr. Kundalia, learned advocate appears for the opposite party no.2/Principal Director of Income Tax (investigation). The complaint was filed by the DDIT (inv) Unit 4(3) of the Income Tax department.

The proviso clause to Section 200 of the Code of Criminal Procedure states that if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint, there is no necessity for examining the complainant and his witness. In this case, a

senior officer of the Income Tax department is the complainant. That being the scenario, there is no requirement of compliance of Section 202 of the Code of Criminal Procedure in this case.

However, if the present petitioner files an application under Section 305 of the Code of Criminal Procedure and is represented by a proper advocate, the learned court in accordance with law will allow the same.

Attention of the Court has been drawn to the order dated 22.01.2021 wherein it reflects that next date was fixed for Execution Return of Warrant of Arrest. The petitioner happens to be the accused No.18 which is an artificial person and not a natural person. Consequently, the warrant of arrest cannot be issued.

The learned Magistrate will in the circumstances, if required, apply the relevant provisions of law for compelling the appearance of artificial person.

With the aforesaid observations, the revisional application being CRR 674 of 2021 is disposed of.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Tirthankar Ghosh, J.)