

Present:
Mr. Justice Zafar Ahmed
And
Mr. Justice Khandaker Diliruzzaman

Criminal Miscellaneous Case No. 44302 of 2023

Advocate Md. Abdul Jalil
...Complainant-petitioner.
-Versus-
The State
...Opposite party.

Mr. Md. Abdul Jalil, (In person)
...For the petitioner
Mr. Md. Sarwar Hossain Bappi, DAG with
Ms. Moududa Begum (Fancy),
Mr. Mohammad Selim and
Mr. Mirza Mohammed Soyeb Muhit, AAGs
.....For the State

Heard and Judgment on: 07.03.2024

Zafar Ahmed, J.

The present petitioner filed a petition of complaint against three persons under Sections 467, 468, 471, 474, 420 and 34 of the Penal Code before the Court of Judicial Magistrate, Cognizance Court, Birampur, Dinajpur on 21.03.2022. The learned Magistrate examined the complainant under Section 200 of the Code of Criminal Procedure and directed the CID, Dinajpur to conduct an inquiry into the matter and to submit a report, vide order No. 01 dated 29.03.2022.

Challenging the said order, the complainant filed Criminal Revision No. 194 of 2022. The learned Sessions Judge, Dinajpur, by the impugned order dated 25.08.2022 rejected the revision. Hence, the instant application under Section 561A of the Cr.P.C. at the instance of the complainant in which Rule was issued on 02.08.2023.

We have heard the petitioner who appeared in person before us at length. We have also heard the Mr. Mirza Mohammed Soyeb Muhit, the learned Assistant Attorney General.

It is submitted by the petitioner that the inquiry into the matter requires application of judicial mind inasmuch as the matter involves *prima facie* determination of genuineness of the certified copy of a registered sale deed being No. 39246 dated 23.09.1969, date of delivery being 25.09.1969, purported to have been registered with the Sub-Registry Office, Fulbari, Dinajpur. It is further submitted that the said Sub Registry office, Fulbari, Dinajpur was burnt down during the war of liberation in 1971 and as such, the original deed cannot be obtained.

Section 202(1) of the Cr.P.C. states that any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint, provided that, save where the complaint has been made by a Court, no such direction shall be made unless the provisions of section 200 have been complied with.

Section 202(1) of the Cr.P.C. makes it clear that an inquiry into the complaint of an offence can be conducted either by a Magistrate or by a police officer or by any other person. In the case in hand, the inquiry into the alleged offence relates to genuineness of the certified copy of a registered sale deed dated 23.09.1969 (delivery date being 25.09.1969), the original of

which cannot be traced for the reason that the concerned Sub-Registry Office was burnt down in 1971. In the circumstances, we find force in the submission of the petitioner that the inquiry requires application of judicial mind and a trained Magistrate is a fit person to conduct the inquiry.

In view of the above, we are of the opinion that justice would be best served if the inquiry in question into the complaint of the offence is held by a Magistrate under Section 202(1) of the Cr.P.C.

Accordingly, the learned Chief Judicial Magistrate, Dinajpur is directed to appoint a Magistrate to conduct an inquiry into the petition of complaint filed by the petitioner in accordance with law.

With the above observations and directions, the Rule is disposed of.

Khandaker Diliruzzaman, J.

I agree.