



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : Crl. Pet./14/2022

SMTI. JARITA DAS AND ANR
W/O SHRI. DILIP DAS, NEAR SATSANGH TEMPLE, PACCA ALI,
P.O. BOKAJAN,
DISTRICT - KARBI ANGLONG, ASSAM

2: SMTI. JHUMU DEBNAT
W/O LATE DRUBA DEBNATH, NEAR SHIB MANDIR, PACCA ALI,
P.O BOKAJAN, DISTRICT - KARBI ANGLONG, ASSAM

VERSUS

SMTI. MAMPI PAUL
W/O SHRI. GOPAL PAUL, T.K. COMPLEX,
LHOMITHI COLONY, P.O DIMAPUR, P.S SUB-URBAN,
DISTRICT - DIMAPUR, NAGALAND AND
REPRESENTED BY POWER OF ATTORNEY HOLDER SHRI,
GOPAL PAUL

Advocate for the Petitioner : P. B. PAUL

Advocate for the Respondent : TONGPOK PONGENER

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 25-04-2023

Heard Mr. Pfosekho Pfotte, learned counsel for the petitioners and Mr. Wati Jamir, learned counsel for the respondent.

2. This is an application under Section 482 read with Section 397 & 401 of the Code of Criminal Procedure, 1973 (CrPC) for quashing of C.R. Case No. 26/2017 under Section 405/406/409/418/420/120-B IPC, 1860 and also assailing the order dated 20.12.2017, passed by the learned Chief Judicial Magistrate, Dimapur, Nagaland taking cognizance under Section 405/406/409/418/420/120-B IPC and Order dated 19.05.2022, passed by the learned Chief Judicial Magistrate, Dimapur, Nagaland.

3. Bereft of all other facts, the fact in brief for the purpose of this petition is that the complainant has filed a complaint case against the petitioners before the learned Chief Judicial Magistrate, Dimapur, Nagaland, for commission of offence punishable under Section 405/406/409/418/420/120-B IPC which was registered and numbered as C.R. Case No. 26/2017. The learned Chief Judicial Magistrate, Dimapur, Nagaland, recorded the statement of the complaint under Section 200 CrPC and by Order dated 20.12.2017 took cognizance of the offence under Section 405/406/409/418/420/120-B IPC and issued process of summon upon the petitioners for appearance. On such summons, the petitioners appeared on 27.04.2018 and raised a plea pertaining to the postponement of process as stipulated under Section 202 CrPC since the petitioners are residing in Bokajan, Assam, which is outside the jurisdiction of the learned Court of Chief Judicial Magistrate, Dimapur. It is noted that the petitioners are residents of Bokajan in the district of Karbi Anglong, Assam.

4. The learned Chief Judicial Magistrate in the later course of time disposed of the C.R. Case No. 26/2017 on withdrawal *vide* order dated 08.06.2018. On such disposal of the C.R. case on withdrawal the respondent approached this Court challenging such disposal on withdrawal. This Court *vide* Order dated 22.02.2022 restored the C.R. Case No. 26/2017 and directed the parties to appear before the learned Court below.

5. The petitioners appeared before the learned Chief Judicial Magistrate, on 19.05.2022 and raised objection for non-compliance of mandatory provisions of Section 202 CrPC, however, the learned Chief Judicial Magistrate, Dimapur, *vide* impugned Order dated 19.05.2022 held that the Court has no power to review its own order, and therefore, directed the petitioners to take necessary steps in the higher Court for relief, if any.

6. The learned counsel for petitioners submits that on the face of the complaint no offence under Section 405/406/409/418/420/120-B IPC have been made out against the petitioners, and the learned Court below ought to have postponed the issue of process against the petitioners inasmuch as the petitioners are residing in Bokajan, Assam, which is beyond the jurisdiction of the learned Court of Chief Judicial Magistrate, Dimapur, and as such, the issuing of process against the petitioners is without compliance of the provisions of Section 202 CrPC.

7. The learned counsel for the petitioner further submits that no cause of action has arisen or has been contemplated within the territorial jurisdiction of the learned Chief Judicial

Magistrate, Dimapur and the learned Chief Judicial Magistrate has given complete go by to the provisions of Chapter-XIII of CrPC and the learned Chief Judicial Magistrate has exceeded its jurisdiction in taking cognizance of offence under Section 405/406/409/418/420/120-B IPC. Therefore, he submits that the C.R. Case No. 26/2017 and the cognizance dated 20.12.2017 and its consequential proceedings are liable to be set aside and quashed. The learned counsel for the petitioners relied in the case of ***National Bank of Oman vs. Barakara Abdul Aziz and another*** reported in ***(2013) 2 SCC 488***.

8. *Per contra* the learned counsel for the respondent submits that taking cognizance and issuance of process against the petitioners by the learned Chief Judicial Magistrate, Dimapur, is not a conviction, rather it is an opportunity to defend themselves. The learned Chief Judicial Magistrate, Dimapur, has acted in consonance with Section 202 CrPC by having been satisfied upon due enquiry to issue process.

9. The learned counsel for the respondent, further submits that even assuming, though not admitting, that the process had been issued prematurely to the petitioners, such procedural error would not automatically vitiate the criminal complaint itself. The prayer for quashing of proceedings of a legitimate criminal complaint on the ground that the learned Trial Court had issued process without conducting enquiry in accordance with 202 CrPC is preposterous and unknown in law. The right approach for such a case would be to cure the defect and proceed in accordance with the procedure laid down by the law.

10. I have considered the rival submissions advanced by the learned counsel for the parties and also examined the materials available on record.

11. The issue in the present proceeding is whether the learned Chief Judicial Magistrate, Dimapur, has complied with the provision of Section 202 CrPC or not and if not whether it is a ground for quashing the complaint case and its consequential proceedings.

12. In the case of ***National Bank of Oman*** (supra) the Hon'ble Supreme Court has held as follows:-

" 9. The duty of a Magistrate receiving a complaint is set out in [Section 202](#) Cr.P.C. 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](#) of the Cr.P.C. 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 grounds for him to proceed further. The scope of enquiry under [Section 202](#) of the Cr.P.C. 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.*

10. [Section 202](#) of the Cr.P.C. was amended by the [Cr.P.C. \(Amendment Act 2005\)](#) and the following words were inserted:

"and shall, in a case where the accused is residing at a place beyond the area in which he exercises jurisdiction"

The notes on clauses for the above-mentioned amendment read as follow:

"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."

The amendment has come into force w.e.f. 23.6.2006 vide notification No.S.O.923(E) dt. 21.6.2006."

13. On a careful consideration of the provision of Section 202 CrPC, the materials available on record, and also the law laid down by the Hon'ble Apex Court as above, it is noted that learned Chief Judicial Magistrate, before summoning the petitioners has failed to make enquiry into the case as required under the law which is obligatory upon him inasmuch as admittedly the petitioners are residents of Bokajan, Assam, beyond the jurisdiction of the learned Chief Judicial Magistrate, Dimapur. Therefore, this Court is of the considered view that the mandatory provisions of Section 202 CrPC has not been complied with by the learned Chief Judicial Magistrate, Dimapur, Nagaland, however, such non-compliance may not be a ground to quash the entire proceedings.

14. In view of above, the orders dated 20.12.2017 and 19.05.2022 are hereby set aside. And the matter is remanded back to the learned Chief Judicial Magistrate, Dimapur, with a direction to pass fresh orders following the provision of Section 202, CrPC.

Criminal Petition No. 14/2022 is accordingly disposed of.

Sd/-
JUDGE

Comparing Assistant