

Court No. - 92

Case :- APPLICATION U/S 482 No. - 19231 of 2016

Applicant :- Saurav Gupta And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Akhilesh Chandra Shukla

Counsel for Opposite Party :- G.A.,Amit Saxena, Madan Mohan Chaurasisa, Vidya Prakash Singh

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Ajay Kumar, Advocate holding brief of Sri Akhilesh Chandra Shukla, learned counsel for the applicants, Sri Vidya Prakash Singh, learned counsel for opposite party no.2 and Sri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of summoning order dated 02.05.2015 passed by learned Additional Chief Judicial Magistrate, Court No.3, Ghaziabad in Complaint Case No.2953 of 2014, under Section 406 I.P.C., Police Station - Sihani Gate, District Ghaziabad.

3. Learned counsel for the applicants submits that the instant criminal complaint filed by opposite party no.2 is a counter blast to the Application under Section 9 of Hindu Marriage Act, filed by applicant no.1 herein as the opposite party no.2 had left the company of applicant no.1 without any reasonable cause, therefore, the instant complaint has been filed on false and fabricated facts. The opposite no.2 had sent a notice on 02.07.2017 and asked the applicants to return the articles. The said legal notice was duly replied by applicant no.1 and it was stated that no such articles as has been mentioned in the list annexed with the notice, have ever been received by the applicants, therefore, there is no question of returning the same. Learned counsel for the applicants further submits that no dowry was given by opposite party no.2 or her family members as the marriage between the parties has taken place through their interaction on the Facebook etc. Learned counsel for the applicants further argued that as per Section 202 Cr.P.C., since the applicants herein were residing outside the jurisdiction of learned Magistrate then the enquiry under Section 202 Cr.P.C. is mandatory and no such enquiry has been conducted. Learned counsel for the applicants further submits that the impugned summoning

order dated 02.05.2015 is illegal, which has been passed without conducting any enquiry under Section 202 Cr.P.C. In support of his submission, learned counsel for the applicants has relied upon the paragraph no.34 of the judgment of Apex Court in ***Birla Corporation Limited Vs. Adventz Investments and Holdings Limited and others : AIR 2019 SC (Criminal) 1025***, which reads as follows:

"34. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction....."

4. On a query made to learned counsel for the applicants that whether even if it is accepted that the enquiry under Section 202 Cr.P.C. is mandatory and if learned Magistrate in terms of Section 202 Cr.P.C. decides to conduct an enquiry himself, as the discretion is given to the Magistrate, then what type of enquiry the Magistrate is required to conduct in the matter when a complaint and the statement under Sections 200 and 202 Cr.P.C. are available before the Magistrate, the learned counsel for the applicant has relied upon the observations made by the Apex Court in ***Mahmood Ul Rehman Vs. Khazir Mohammad Tunda & others : AIR (2015) SC 2195***, which reads as follows:

"..... There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction....."

5. In view of the aforesaid, learned counsel for the applicants submits that such enquiry has been conducted without issuing any notice to the applicants.

6. Per contra, learned counsel for opposite party no.2 has relied upon paragraph no.61 of the said judgment of Apex Court in ***Birla Corporation Limited (supra)***, which reads as follows:

"61. The object of investigation under Section 202 Cr.P.C. is "for the purpose of deciding whether or not there is sufficient ground for proceeding". The enquiry under Section 202 Cr.P.C. is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against or whether it is a baseless one

on which no action need be taken. The law imposes a serious responsibility on the Magistrate to decide if there is sufficient ground for proceeding against the accused. The issuance of process should not be mechanical nor should be made as an instrument of harassment to the accused. As discussed earlier, issuance of process to the accused calling upon them to appear in the criminal case is a serious matter and lack of material particulars and non-application of mind as to the materials cannot be brushed aside on the ground that it is only a procedural irregularity...."

7. Learned counsel for opposite party no.2 submits that before summoning the applicants, learned Magistrate, after perusal of the allegations made in the complaint, decided to conduct an enquiry into the allegations made in the complainant before issuing the summons to the accused persons and after recording the statement of the complainant under section 200 Cr.P.C. also recorded the statement of witnesses produced by the complainant under section 202 Cr.P.C. to complete the enquiry as contemplated under section 202 Cr.P.C. and after considering the entire material including the statement of witnesses, the Magistrate has recorded his satisfaction that there is a *prima facie* case against the applicants herein, and thereafter, has summoned the applicants for trial in the said complaint filed by the Opposite Party No. 2. Therefore, the summoning order dated 02.05.2015 is not mechanical, but was passed by the learned Magistrate after conducting the enquiry as contemplated under section 202 Cr.P.C. and recording his satisfaction that a prima case is made out against the applicants herein, as if the averments made in the complaint and in the statements under section 200 and 202 Cr.P.C., goes un rebutted during the trial, this material is sufficient to convict the accused for which they are summoned.

8. Having heard the submissions made by learned counsel for the parties, this Court has carefully perused the record of the case.

9. For the proper adjudication of the instant application, it is relevant to quote the provisions of Section 200, 202 and 204 Cr.P.C.

“200. Examination of complainant - A magistrate taking cognizance of an offence on complaint shall, examine upon oath the complainant and witnesses present, if any and the substance of such examination shall be

reduced into writing and shall be signed by the complainant and 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.”

202. Postponement of issue of process: *1. Any Magistrate, on receipt of a complaint of an offence of which he is authorised 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 offence 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.

204. Issue of process – *(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -*

(a) a summons-case, he shall issue his summons for the attendance of the accuse, or

(b) a warrant-case, he may issue a warrant, of, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain

time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87.

10. From reading of the provisions of Section 200 and 204 Cr.P.C. it is clear that on presentation of the complaint filed under section 200 Cr.P.C. by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under section 204 Cr.P.C. The purpose of the enquiry under Section 202 Cr.P.C. is to determine whether a prima facie case is made out and whether there is sufficient ground for proceedings against the accused.

11. Under the amended sub-section (1) to Section 202 Cr.P.C. (as amended by Cr.P.C. (Amendment) Act, 2005, with effect from 23.6.2006), it is obligatory upon the Magistrate that before summoning an accused, who is residing beyond its jurisdiction, to conduct an enquiry. However, the Magistrate has discretion to opt any of the three options available to him to conduct such enquiry. a) he may enquire into the case himself or; b) direct the investigation to be made by a police officer or; c) by such other person as he thinks fit. The object of such enquiry is to find out whether or not there is sufficient ground for proceedings against the accused. The need for such amendment was felt by the legislature, as false complaints were filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that

persons residing at far off places are not harassed by filing false complaints making it obligatory for the Magistrate to enquire.

12. The Apex Court in the case of [Vijay Dhanuka and Others v. Najima Mamtaj and Others](#) (2014) 14 SCC 638, considering the scope of amendment to [Section 202](#) Cr.P.C., has held as under:-

“12. The use of the expression “shall” prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word “shall” is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word “shall” in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression “shall” and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.”

Since the amendment is aimed to prevent persons residing outside the jurisdiction of the court from being harassed, it was reiterated that holding of enquiry is mandatory. The purpose or objective behind the amendment was also considered by this Court in Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another (2017) 3 SCC 528 and National Bank of Oman v. Barakara Abdul Aziz and Another (2013) 2 SCC 488.”

(Emphasis supplied)

13. . [In Jagdish Ram v. State of Rajasthan and Another](#) (2004) 4 SCC 432, the Apex Court has held as under:-

“10. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.”

(Emphasis supplied)

14. In [Union of India Vs. Ashok Kumar Sharma](#) (2021) 12 SCC 674, the Supreme Court in paragraph 50 held as under:

“50. The learned Amicus Curiae, when queried about the procedure to be adopted when a complaint is lodged by persons falling in [Section 32\(C\)](#) and (d), viz., the aggrieved person or a voluntary association, it was submitted that the Magistrate can, under [Section 202](#) of the CrPC, order an investigation by the Police Officer or any other person. A perusal of [Section 202](#) would show that in regard to an offence falling under Chapter IV of the Act, being exclusively triable, by a Court of Sessions, the proviso to sub-Section (1) to [Section 202](#) prohibits the direction for investigation under [Section 202](#). The proviso to sub-Section (2) of [Section 202](#) contemplates that when an offence is exclusively triable by the Court of Sessions, and the Magistrate proceeds under [Section 202](#) of the CrPC, he is duty bound to call upon the complainant to produce all its witnesses and examine them on oath. Thus, the effect of the two provisions in sub-Sections (1) and (2), respectively, is as follows: a Magistrate proceeding under [Section 202](#) of the CrPC, is subjected to two conditions:

(a) Unlike in an ordinary case, meaning thereby, an offence which is not exclusively triable by a Court of Sessions, in a case where it is an offence exclusively triable by a Court of Sessions, the inquiry can be conducted only by a Magistrate himself. It is not open to him to cause an investigation be it by a Police Officer or any other person.

(b) In regard to the inquiry so conducted by him, he must call upon the complainant to produce all his witnesses and they must be examined not on the basis of any affidavit, and not without the support of an oath but the examination must be under an oath. It is to be remembered that under the provisions existing under the previous Code, an elaborate preliminary inquiry where even an accused had right of cross-examination of witnesses, was contemplated at the hands of the Magistrate before the committal order was passed. This no longer survives after the amendment.”

(Emphasis supplied)

15. The Supreme Court relying upon the judgement in the case of **Birla Corporation Limited (supra)**, in the case of **Deepak Gaba Vs. State of U.P. (2023) (3) SCC 423** has held in paragraphs 31 and 32 as under:

“30. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of [Section 204](#) of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under [Section 200](#) of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued.

31. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either

on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.”

16. The Supreme Court in the case of [Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose and Another AIR 1963 SC 1430](#) and in a series of judgments has held that the object of an enquiry under [Section 202](#) Cr.P.C. is for the Magistrate to scrutinize the material produced by the complainant to satisfy himself that the complaint is not frivolous and that there is evidence/material which forms sufficient ground for the Magistrate to proceed to issue process under [Section 204](#) Cr.P.C. It is the duty of the Magistrate to elicit every fact that would establish the bona fides of the complaint and the complainant.

17. Reference to the judgments of the Supreme Court, would clearly show that the allegations in the complaint and complainant’s statement and other materials must show that there are sufficient grounds for proceeding against the accused. In the light of the above principles, the court proceeded to consider the instant case whether the allegations in the complaint and the statement of the complainant and other materials before the Magistrate were sufficient enough to constitute prima-facie case to justify the Magistrate’s satisfaction that there were sufficient grounds for proceeding against the accused and whether there was application of mind by the learned Magistrate in taking cognizance of the offences and issuing process to the accused.

18. The enquiry under section 202 Cr.P.C. is to ascertain the fact that the complaint has any valid foundation calling for issuance of process to the persons complained against or whether it is a baseless case on which no action need be taken. It is the serious responsibility of the Magistrate to decide as to whether there is sufficient ground for proceeding against the accused and process should not be mechanical nor should be made as an instrument of harassment to the accused.

19. As pointed out earlier, the object behind the amendment to [Section 202](#) Cr.P.C. is to ensure that innocent persons who are residing at far off

places are not harassed by unscrupulous persons. The amendment therefore, makes it obligatory upon the Magistrate that before summoning the accused residing beyond the jurisdiction, the Magistrate has to enquire the case either himself or direct investigation to be made by the police officer or any other person, so authorised. When in exercise of the obligation as mandated under section 202 Cr.P.C., when the accused is the resident of beyond the jurisdiction of such Magistrate, the Magistrate applying his discretion decides to conduct such enquiry himself, then the scope and method of enquiry is provided in section 202(2) Cr.P.C., which mandates that the Magistrate shall call upon the Complainant to examine the witnesses on oath in support of his complaint and after such statement under section 202 (2) Cr.P.C. are recorded, that is the sufficient compliance of mandatory enquiry to be conducted under Section 202(1) Cr.P.C. Thus, if on perusal of such material i.e. the Complaint, the documents placed in support of the complaint and the Statement of complainant under section 200 and Statement of witnesses under section 202, the Magistrate after applying his mind, is satisfied that a prima facie case is made out against the accused, then he is justified in summoning the accused under section 204 Cr.P.C.

20. In the present case the learned Magistrate has opted to hold the enquiry as contemplated under section 202(1) Cr.P.C. himself and called upon the Complainant to produce her witnesses. After recording the statements of witnesses under section 202(2), the Magistrate considered the entire material including the complaint, Statement of complainant under section 200 and the statements of witnesses under section 202 Cr.P.C., who had supported the averments made in the complaint and thereupon the Magistrate has recorded his satisfaction that a prima facie case is made out against the applicants herein, therefore, the Magistrate vide order dated 02.05.2015 has summoned the applicants herein. The impugned summoning order dated 2.5.2015 passed by the Magistrate reads as under:

“02.05.2015

पुकार करायी गयी। पत्रावली पेश हुयी। तलबी के बिन्दु पर पारिवादिनी के विद्वान अधिवक्ता को सुना तथा पत्रावली का अवलोकन किया।

संक्षेप में परिवादिनी का अपने परिवाद पत्र में कथानक इस प्रकार है कि परिवादिनी का विवाह सौरभ गुप्ता के साथ दिनांक 15.4.12 को हुआ था जिसमें परिवादिनी के माता पिता ने बीस लाख रुपये खर्च किया था तथा दान दहेज व स्त्रीधन के रूप में काफी सामान दिया था जिसकी सूची संलग्न है। लेकिन दो तीन माह के पश्चात कम दहेज का ताना देकर अतिरिक्त दहेज की मांग करते हुये 6 लाख रुपये की मांग करने लगे तथा परिवादिनी को तरह तरह से तंग व परेशान करने लगे। विपक्षीगण ने शादी की सालगिरह दिनांक 15.04.13 को परिवादिनी को मारपीट कर रात करीब दस बजे केवल पहने हुए कपड़े में अपने घर से निकाल दिया तथा तब से आज तक वह अपने मायके में रह रही है। शादी में दिया गया सभी दान दहेज उपहार स्त्रीधन अब विपक्षीगण की हिरासत में है को परिवादिनी को लौटाने तथा उसकी मर्जी के बगैर अपने इस्तेमाल में न करने व खुर्द बुर्द न करने के लिये एक कानूनी नोटिस डाक द्वारा अपने अधिवक्ता के माध्यम से भेजा लेकिन विपक्षीगण ने बाबजूद कानूनी नोटिस के परिवादिनी के उक्त स्त्रीधन को न तो लौटा रहे हैं तथा न ही उसको अपने इस्तेमाल में लेना बन्द किया है। तथा उसे खुर्द बुर्द कर दिया है। जिसकी शिकायत संबंधित थाना सिंहानी गेट में की लेकिन उसकी कोई रिपोर्ट दर्ज नहीं की उसके उपरान्त एक लिखित प्रार्थनापत्र एस एस पी गाजियाबाद को दिया जिसकी बाबत आज तक कोई कार्यावही नहीं हुई। तब जाकर यह प्रार्थनापत्र न्यायालय के समक्ष प्रस्तुत किया है।

इसी आशय का बयान परिवादिनी ने धारा 200 दं०प्र०सं० के अन्तर्गत लेखबद्ध कराया है तथा धारा 202 दं०प्र०सं० में साक्षी पी०डब्लू० 1 महेन्द्र पाल पुत्र फूलचन्द व पी०डब्लू० 2 उमेश अग्रवाल पुत्र महेन्द्र पाल को पेश किया है जिसमें परिवादिनी के अनुसार बयान दिया है। उपरोक्त परिवाद कथानक परिवादी व परिवादी द्वारा प्रस्तुत साक्षी के बयानों के प्रकाश में प्रथम दृष्टया विपक्षी सौरव गुप्ता जगदीश श्रीमती किरनबाला समीर गुप्ता के बयानों द्वारा भ०दं०सं० की धारा 406 का अपराध कारित किया जाना दर्शित होता है। विपक्षीगण तद्नुसार उपरोक्त धारा में अभियुक्त विचारण हेतु तलब किये जाने योग्य है।

आदेश

विपक्षी सौरव गुप्ता जगदीश श्रीमती किरनबाला समीर गुप्ता को भ०दं०सं० की धारा 406 के तहत अभियुक्त के रूप में विचारण हेतु तलब किया जाता है। परिवादी अन्दर 10 दिवस पैरवी करे। परिवाद वास्ते हाजिरी अभियुक्त दिनांक 04.08.15 को पेश हो।

अपर मुख्य न्यायिक मजिस्ट्रेट

कोर्ट सं० 3 गाजियाबाद "

21. From the above, it is amply clear that the Magistrate adopted to hold enquiry himself and thereafter after considering the statements of the complainant and the witnesses, namely, Mahendra Pal and Umesh Agarwal under sections 200 and 202 Cr.P.C. arrived at a conclusion that prima facie a case is made out against the applicants herein, thereafter

summoned the applicants herein. In the present case perusal of the impugned summoning order clearly shows that the Magistrate has recorded his satisfaction and applied his mind and after considering the statements of the complainant and the witnesses has passed the impugned summoning order, which requires no interference by this Court.

22. From perusal of complaint as well as the statement under Section 200 and 202 Cr.P.C., recorded by the Magistrate in terms of Section 202 Cr.P.C. the court is of the considered opinion that *prima facie* a case is made out against the applicants under Section 406 I.P.C. Section 202 Cr.P.C. does not mandate that the Magistrate should conduct any enquiry to collect the material which was not before him. On the basis of material available before him a *prima facie* satisfaction has been recorded and a *prima facie* case is made out against the applicants herein which is sufficient for compliance of an enquiry under Section 202 Cr.P.C. What is prohibited in terms of the judgment of Apex Court in ***Birla Corporation Limited (supra)*** that the Magistrate could not pass any order mechanically and he has to apply his mind to the material available before him and on the basis of scrutiny of the material he should record his satisfaction, which has been categorically recorded in the instant case. So far as the submissions of learned counsel for the applicants with regard to his claim that no dowry etc. was given by opposite party no.2 and her family members and the marriage between the parties had taken place out of their interaction through Facebook, that is defence of the applicants, which has to be established during trial of the applicants.

23. In view of the above, the instant application is devoid of merit and is hereby **dismissed**.

Order Date :- 4.12.2023

Atul