



CRM-M-30136-2017

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30136-2017

Date of decision: 23.07.2024

Sachin Kashyap

...Petitioner

V/s

Babita

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. P.K. Dwivedi, Advocate for the petitioner.
Mr. G.B.S. Gill, Advocate for
Mr. Shilesh Gupta, Advocate for the respondent.

SUMEET GOEL, J.

1. The present petition has been filed, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C') by the petitioner-Sachin Kashyap for quashing of criminal complaint No.223 dated 18.11.2016 filed under Sections 406, 498-A, 420, 120-B, 376, 323, 324, 506 of IPC; summoning order dated 09.06.2017 passed by Judicial Magistrate First Class, Ludhiana and all proceedings emanating therefrom.
2. It would be pertinent to refer herein to the factual matrix of the present *lis*.
 - (i) The marriage of the petitioner and the respondent (herein) - complainant was solemnized at Ludhiana on 23.01.2003. Two children were born out of this wedlock.
 - (ii) A petition under Section 13-B of the Hindu Marriage Act, 1955 was filed before the Family Court at Roorkee, Haridwar (Uttarakhand)



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wherein, vide judgment/decreed dated 22.09.2014, the marriage between the petitioner and the respondent (herein) - complainant was dissolved.

(iii) The respondent (herein) - complainant filed an application before the said Family Court pleading that the mutual consent divorce decree was obtained on account of fraud. Vide order dated 11.05.2015 passed by the Family Court, Roorkee, this application was dismissed.

(iv) The respondent (herein) - complainant filed another application before the said Family Court, Roorkee seeking setting-aside of the mutual consent divorce decree. However, the same was also dismissed by the said Family Court vide order dated 04.11.2015.

(v) Still aggrieved, the respondent (herein) - complainant filed an appeal before the Hon'ble High Court of Uttarakhand at Nainital wherein a prayer was made for setting-aside of the above-said two dismissal orders passed by the Family Court, Roorkee as also the judgment/decreed dated 22.09.2014 granting mutual consent divorce. However, the said appeal was withdrawn by the appellant (respondent herein) vide order dated 14.07.2017, relevant whereof reads as under:

"FA No.125 of 2015

Hon'ble Rajiv Sharma, J

Hon'ble Sharad Kumar Sharma, J.

Mr. Deepak Sharma, Advocate for the appellant.

Mr. Ajay Veer Pundir, Advocate for the respondent.

Learned counsel for the appellant submitted that he may be permitted to withdraw the appeal with liberty reserved to take recourse to law, if advised.

Permission granted.

The appeal is dismissed as withdrawn with the aforesaid liberty.

It is, however, made clear that limitation shall not come in the way of the appellant since she is diligently pursuing the remedy before this Court.



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*Sd/- (Sharad Kumar Sharma, J.)**Sd/- (Rajiv Sharma, J)*

14.07.2017”

(vi) The respondent (herein) - complainant filed a complaint dated 18.08.2015 before the Women Commission, Punjab at Chandigarh pleading for registration of an FIR under Sections 406/498-A etc. of IPC against the petitioner and his family members. The matter was looked into by the Police, upon the directions of the said Women Commission, but the said complaint was recommended for filing.

(vii) Thereafter, the respondent (herein) - complainant filed the impugned criminal complaint No.223, dated 18.11.2016 under Sections 406, 498-A, 420, 120-B, 376, 323, 324 & 506 of IPC before the JMIC, Ludhiana wherein the petitioner was directed to be summoned as an accused for an offence under Section 420 of IPC vide the impugned summoning order dated 09.06.2017.

(viii) It is in this factual backdrop that the present petition has been preferred by the petitioner-accused for quashing of the impugned criminal complaint; summoning order passed by JMIC, Ludhiana as also all the proceedings arising therefrom.

3. Learned counsel for the petitioner has argued that the marriage between the petitioner and the respondent (herein) - complainant was dissolved vide judgment and decree dated 22.09.2014 passed by the Family Court, Roorkee (Uttarakhand) and the same was challenged twice by way of filing applications before the said Family Court which resulted in dismissal of the said applications. Even an appeal filed by the respondent (herein) - complainant before the High Court of Uttarakhand at Nainital was



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the respondent (herein) - complainant, on account of allegations of harassment etc. arising out of the matrimony, was closed by the Police. Learned counsel has, thus, argued that the impugned criminal complaint is a result of *mala fide* on part of the respondent (herein) - complainant to harass and humiliate the petitioner & his family members. Learned counsel has further argued that the Magisterial Court at Ludhiana could not have looked into the aspect as to whether any cheating was committed by the petitioner in obtaining the Family Court judgment/decree as the issue was raked up twice before the said Family Court as also before the High Court of Uttarakhand at Nainital but the said plea(s) of the respondent (herein) - complainant remained unsuccessful. Learned counsel has further argued that a bare perusal of the criminal complaint filed by the respondent (herein) - complainant and the summoning order passed therein would clearly show that not only the petitioner (herein) but all the other respondent(s)/accused in the said criminal complaint were residing outside the territorial jurisdiction of the Court at Ludhiana and hence the criminal complaint as also the summoning order passed therein deserve to be quashed, being in derogation of the mandatory provisions of Section 202(1) of Cr.P.C.

4. Learned counsel appearing for the respondent (herein) - complainant has opposed the instant petition by arguing that the Magisterial Court has rightly passed the summoning order thereby summoning the petitioner (herein) for offence(s) committed by him as the petitioner had cheated the respondent (herein)-complainant by obtaining a judgment/decree of mutual consent divorce by fraud without paying any amount as permanent alimony. Learned counsel has further argued that the respondent (herein) -

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complainant was a victim of conspiracy hatched by the petitioner along with his relatives who even managed to collude with the counsel on both the sides and the complainant was used as a rubber stamp as she was not allowed to even read the documents in question. Learned counsel has further argued that, even after the divorce decree having been passed, the petitioner (herein) gave false promises to the respondent (herein) - complainant that he will remarry the complainant and, thus, continued to make physical relations with her on this account. Learned counsel has further argued that the impugned summoning order is a well reasoned and speaking order & hence no interference is called for by this Court especially at this stage. Thus, dismissal of the instant petition has been prayed for.

5. I have heard learned counsel for the parties and have perused the record including the lower Court record, which was directed to be summoned, by way of order dated 21.03.2024 earlier passed by this Court.

Prime issue

6. The prime legal issue that arises for consideration in the present petition is as to whether the impugned criminal complaint, summoning order passed therein as also all proceedings arising therefrom deserve to be quashed.

The analogous legal issue that arises for consideration is as to whether it is mandatory for a Magisterial Court to comply with the provisions of Section 202(1) of Cr.P.C. when considering a criminal complaint pending adjudication before it. The further analogous issue that arises is that, in case Section 202(1) of Cr.P.C is mandatorily required to be

complied with, what are the parameters/requirements for consideration thereof.

Relevant Statutory provisions

7. **The Code of Criminal Procedure, 1973**

Section 2(g) of Cr.P.C., 1973 reads as under:-

“xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

Section 202 of Cr.P.C., (as it stood before 23.06.2006) reads as under:-

“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, 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.

xxx	xxx	xxx	xxx	xxx	”
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Section 202 of Cr.P.C., (as it was amended w.e.f. 23.06.2006) reads as under:-

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.

xxx xxx xxx xxx xxx ”

Relevant Case Law

8. The precedents, germane to the matter(s) in issue, are as follows:

I Re: Section 202(1) of Cr.P.C. of 1973

i. The Hon'ble Supreme Court in judgment titled as **Vijay Dhanuka etc. vs. Najima Mamtaj etc.: AIR 2014 SC (Supp) 756**, has held as under:

“11. 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. In view of the decision of this Court in the case of **Udai Shankar Awasthi v. State of Uttar Pradesh, (2013) 2 SCC 435**, this point need not detain us any further as in the said case, this Court has clearly held that the provision aforesaid is mandatory. It is apt to reproduce the following passage from the said judgment:

“40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it obligatory upon the Magistrate to enquire into the



case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.”

12. *In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:*

“2. xxx xxx xxx

(g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

xxx xxx xxx”

13. *It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process.*

ii. The Hon'ble Supreme Court in judgment titled as ***Abhijit Pawar vs. Hemant Madhukar Nimbalkar & anr.: (2017) 3 SCC 528*** has held as under:

“24. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of 'enquiry' is needed under this provision has also been explained in Vijay Dhanuka case, which is reproduced hereunder:

“14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:



“2.(g) ‘inquiry’ means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;”

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.”

iii. A five Judges Bench of Hon’ble Supreme Court in ***Suo Motu Writ Petition (Crl.) No.2 of 2020*** in case of ***In Re: Expeditious trial of cases under Section 138 of N.I. Act, 1881: 2023 SCC Online 1197*** vide order dated 16.04.2021, has held as under:

“INQUIRY UNDER SECTION 202 OF THE CODE IN RELATION TO SECTION 145 OF THE ACT”

10. *Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See: ***Vijay Dhanuka & Ors. v. Najima Mamta & Ors., (2014) 14 SCC 638, Abhijit Pawar v. Hemant, Madhukar Nimbalkar and Anr., (2017) 3 SCC 528 and Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors., (2019) 16 SCC 610***). There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the*



court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

*11. The learned Amici Curiae referred to a judgment of this Court in **K.S. Joseph v. Philips Carbon Black Ltd & Anr., (2016) 11 SCC 105** where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in **Vijay Dhanuka** (supra), **Abhijit Pawar** (supra) and **Birla Corporation** (supra), the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.*

*12. xxx xxx xxx xxx xxx
 xxx xxx xxx xxx xxx.*

On a holistic reading of Section 145 along with Section 202, we hold that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202.

*xxx xxx xxx xxx xxx
 xxx xxx xxx xxx xxx*

24. The upshot of the above discussion leads us to the following conclusions:

- 1) xxx xxx xxx xxx
 xxx xxx xxx xxx*
- 2) xxx xxx xxx xxx
 xxx xxx xxx xxx*

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the



Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.”

iv. The Hon'ble Supreme Court in judgment titled as **Sunil Todi & ors. vs. State of Gujarat & Anr.:2022(1) R.C.R.(Criminal) 395**, has held as under:

“32. Under Sub-Section (1) of Section 202, a Magistrate upon the receipt of a complaint of an offence of which he/she is authorized to take cognizance is empowered to postpone the issuance of process against the accused and either (i) enquire into the case; or (ii) direct an investigation to be made by a police officer or by such other person as he thinks fit. The purpose of postponing the issuance of process for the purposes of an enquiry or an investigation is to determine whether or not there is sufficient ground for proceeding. However, it is mandatory for the Magistrate to do so in a case where the accused is residing at a place beyond the area in which the Magistrate exercises jurisdiction. The accused persons in the present case reside at Aurangabad while the complaint under Section 138 was filed before the Magistrate in Mundra. The argument of the appellants is that in these circumstances, the Magistrate was duty bound to postpone the issuance of process and to either enquire into the case himself or to direct an investigation either by a police officer or by some other person. Section 203 stipulates that if the Magistrate is of the opinion on considering the statement on oath, if any, of the complainant and of the witnesses, and the result of the enquiry or investigation if any under Section 202 that there is no sufficient ground for proceeding, he shall dismiss the complaint recording briefly his reasons for doing so. The requirement of recording reasons which is specifically incorporated in Section 203 does not find place in Section 202. Section 204 which deals with the issuance of process stipulates that if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, he may issue (a) in a summons case, a summons for attendance of the accused; (b) in a warrant case, a warrant or if he thinks fit a summons for the appearance of the accused. These proceedings have been interpreted in several judgments of this Court. For the purpose of the present case, some of them form the subject matter of the submissions by the appellants and the second respondent.”



35. While noting that the requirement of conducting an enquiry or directing an investigation before issuing process is not an empty formality, the Court relied on the decision in *Vijay Dhanuka* which had held that the exercise by the Magistrate for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused is nothing but an enquiry envisaged under Section 202 of the Code.

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

38. Section 145 of the NI Act provides that evidence of the complainant may be given by him on affidavit, which shall be read in evidence in an inquiry, trial or other proceeding notwithstanding anything contained in the CrPC. The Constitution Bench held that Section 145 has been inserted in the Act, with effect from 2003 with the laudable object of speeding up trials in complaints filed under Section 138. Hence, the Court noted that if the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. Consequently, it was held that Section 202(2) CrPC, 1973 is inapplicable to complaints under Section 138 in respect of the examination of witnesses on oath. The Court held that the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under Section 202.”

v. The Hon’ble Supreme Court in a judgment titled as ***Deepak Gaba and others vs. State of Uttar Pradesh and Another: 2023 AIR (Supreme Court) 228***, has held as under:

“22. While summoning an accused who resides outside the jurisdiction of court, in terms of the insertion made to Section 202 of the Code by Act No. 25 of 2005, it is obligatory upon the Magistrate to inquire into the case himself or direct investigation be made by a police officer or such other officer for finding out whether or not there is sufficient ground for proceeding against the accused. xxx xxx xxx xxx”



vi. The Hon’ble Supreme Court in a judgment titled as *Shiv Jatia vs. Gian Chand Malick & Ors.: 2024(4) R.C.R. (Criminal) 76*, has held as under:

“8. In this case, there is no dispute that some of the accused, including three of the appellants, were residing outside the territorial jurisdiction of the Court of the learned Magistrate before whom the complaint was filed by the 1st respondent-complainant. Sub-section (1) of Section 202 of the Cr.PC was amended with effect from 23rd June 2006 by the Act No.25 of 2005. Sub-section (1) of Section 202 of the Cr.PC, as amended, reads thus:

"202. Postponement of issue of process.-

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

The portion starting from "and" and ending with "his jurisdiction" was added with effect from 23rd June 2006. The requirement of postponing the issue of the process was introduced on 23rd June 2006 which is applicable only when one of the accused stays outside the jurisdiction of the court. The said requirement is held to be mandatory.

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

11. After recording the evidence of the three witnesses and perusing the documents on record, the learned Magistrate passed the order calling for the report under Section 202 of the Cr.PC. He postponed the issue of the process. The learned Magistrate ought to have waited until the report was received. He had an option of conducting an inquiry contemplated by sub-section (1) of Section 202 of the Cr.PC himself due to the delay on the part of the Police in submitting the report. But, he did not exercise the said option. For issuing the order of summoning, the learned Magistrate could not have relied upon the same material which was before him on 15th December 2011 when he passed the order calling for the report under Section 202 of the Cr.PC. The reason is that, obviously, he was not satisfied that the material was sufficient to pass the summoning order. It is not the case of the 1st respondent complainant that when the learned Magistrate passed the order dated 16th July 2013, there was some additional material on record. At least, the order of the learned Magistrate does not say so. The order does not even consider the earlier

order dated 15th December 2011 calling for the report under subsection (1) of Section 202 of the Cr.PC. The order issuing process has drastic consequences. Such orders require the application of mind. Such orders cannot be passed casually. Therefore, in our view, the learned Magistrate was not justified in passing the order to issue a summons.”

vii. A Full Bench of Hon’ble Bombay High Court in a judgment titled as ***Bansilal S. Kabra vs. Global Trade Finance Limited & anr.: 2010 LawSuit(Bom) 1735***, has held as under:

“1. In light of the cleavage of opinion on the aspect whether the amendment in Section 202, sub clause(1) of the Code of Criminal Procedure, contemplating an inquiry before issuance of process by the Magistrate, where the accused is residing outside the jurisdiction of the Court, is discretionary or mandatory, a larger Bench was constituted by the then, Hon’ble The Chief Justice.

	xxx	xxx	xxx	xxx	xxx
	xxx	xxx	xxx	xxx	xxx
7.	xxx	xxx	xxx	xxx	xxx

However, we would like to only add, by taking note, that Chapter XV of the Code, which contemplates complaints to the Magistrate, which includes Section 202, intended to achieve twin objects; one being to enable the Magistrate to carefully scrutinize the allegations made in the complaint with a view to prevent a person named therein, as accused from being called upon to face unnecessary, frivolous or meritless complaint; and the other, to find out whether there is any material in existence, to support the allegations in the complaint. The Magistrate is therefore, duty bound to elicit all facts, having regard to the interest of the complainant, in absence of the accused, before he brings to book him for the accusations in the complaint. For forming an opinion to that effect, the Magistrate may himself hold an inquiry u/s. 202 of the Code, or direct investigation to be made by a police officer.

We may also add that in a contingency, when he decides to conduct an inquiry, specifically against the persons residing outside his territorial jurisdiction, the inquiry must be aimed at ascertaining the truth or otherwise in the allegations made in the complaint. It is expected that the Magistrate shall not only rely upon the averments in the complaint, as it may many a times, contain unfounded allegations which require



ascertaining of its veracity, before the process is issued, so as to separate the chaff from the grain.

Before the Magistrate acts on the complaint, by issuing process against the person named as an accused therein, he shall satisfy himself about the existence of sufficient ground(s), for proceeding against him, particularly when he is residing outside his jurisdiction. The amended provision is aimed to prevent innocent persons residing at far places, from harassment by unscrupulous persons, filing unfounded and false complaints.

This would necessarily involve recording of statement of the complainant on oath, in form of verification statement or recording evidence of any witnesses produced by the complainant, in support of the allegations in the complaint, to find out whether a prima facie case for issuance of process has been made out.”

II. *Re:* Principle that if a Statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

(i) A three Judges Bench of the Hon’ble Supreme Court in a judgment reported as ***Chandra Kishore Jha v. Mahavir Prasad & Ors.: (1999) 8 SCC 266***, has held as under:

“17.....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935) 63 IA 372 : AIR 1936 PC 253 (II)] , Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098] , State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57] .) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done.....”



(ii) The Hon’ble Supreme Court in a judgment titled as ***Cherukuri Mani vs. Chief Secretary, Government of Andhra Pradesh & Ors.: (2015) 13 SCC 722***, has held as under:

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....”

III. ***Golden Rule of Interpretation/Literal Rule of Interpretation***

(i) A Five Judges Bench of Hon’ble Supreme Court in a judgment titled as ***Chief Justice of A.P. vs. L.V.A. Dikshitulu, 1979(2) SCC 34*** has held as under:-

“63. The primary principle of interpretation is that a constitutional or statutory provision should be construed according to the intent of they that made it”(Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognized rules of construction, such as its legislative history, the basis scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.”

(ii) In a judgment rendered by Hon’ble Supreme Court in ***National Insurance Co. Ltd. vs. Laxmi Narain Dhut, 2007(3) SCC 700***, it has been held as under:



“29. “Golden Rule” of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to ‘rule of legislative intent’. The world over, the principle of interpretation according to the legislative intent is accepted to be more logical.”

IV. ***Heydon’s Rule of Interpretation/Mischief Rule of Interpretation***

(i) A Seven Judges Bench of Hon’ble Supreme Court in a judgment titled as ***Bengal Immunity Co. Ltd. Vs. State of Bihar and others***, ***AIR 1995 SC 661***, has held as under:-

“(22) It is a sound rule of construction of a statute firmly established in England as far back as 1584 when – ‘Heydon’s case, (1584) 3 Co Rep 7a (V) was decided that –

“.....for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st What was the common law before the making of the Act

2nd What was the mischief and defect for which the common law did not provide,

3rd What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and ‘pro private commodo’, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, ‘pro bono publico’ ”.

In – *In re, Mayfair Property Co.*’ (1898) 2 Ch 28 at p. 35 (W) Lindley M.R. in 1898 found the rule “as necessary now as it was when Lord Coke reported ‘Heydon’s case (V)’, In – *Eastman photographic Material Co. v. comptroller General of Patents, Designs and Trade marks*’, 1898 AC 571 at p. 576 (X) Earl of Halsbury re-affirmed the rule as follows :

“My Lord, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion.”

It appears to us that this rule is equally applicable to the construction of Art, 286 of our Constitution. In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood



immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief.”

(ii) The Hon’ble Supreme Court in judgment titled as ***R.M.D. Chamarbaugwalla and another vs. Union of India and another, 1957 AIR (Supreme Court) 628***, held as under:

*“6..... Now, when a question arises as to the interpretation to be put on an enactment, what the Court has to do is to ascertain “the intent of them that make it”, and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literally interpretation of the words used in disregard of all other materials. “The literally constructions then”, says Maxwell on Interpretation of Statutes, 10th Edn., p.19, “has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy”. The reference here is to Heydon’s case. These are principles well settled, and were applied by this Court in **Bengal Immunity Co. Ltd. v. State of Bihar, 1955-2 SCR 603 at p.633**. To decide the true scope of the present Act, therefore we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute.....”*

Analysis (re law)

9. Section 202(1) of Cr.P.C. was amended by way of an amendment carried out w.e.f. 23.06.2006 by introducing the words “*and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction*”. The purpose behind this amendment can well be gauged from the draft accompanying the amendment, Clause 19 whereof reads as under:

“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



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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 statutory provision of Section 202(1) of Cr.P.C., as it stands after the amendment is unequivocal and hence there is no scope whatsoever of ambiguity therein. It is a trite principle of statutory interpretation that the intent of a provision is to be gathered from the language of the provision & if the phraseology employed by the legislature is plain/clear, the same has to be given effect to. It has been held by a five Judges Bench in the case of **Dikshitulu** (supra) as also another judgment of the Supreme Court in the case of **Laxmi Narain Dhut** (supra) that the pre-dominant method of reading/interpreting a statute is to look into the plain, simple and ordinary sense of the word used by the legislature.

The mischief sought to be eradicated by way of bringing into vogue the amended Section 202(1) of Cr.P.C. is to enable the Magistrate to further carefully scrutinize the allegations raised in the complaint with a view to prevent a person named therein, as an accused, from being called upon to face unnecessary or frivolous or meritless complaint only with a view to cause harassment. The inquiry is to find out what material is there to support the allegations in the complaint. In other words, the object of the inquiry under Section 202(1) of Cr.P.C. is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against *aka* accused or whether it is baseless one on which no action needs to be taken. The principle of Heydon's Rule of Interpretation (Mischief Rule of Interpretation),



Immunity Co. Ltd. (supra) as also *RMDC Chamarbaugwalla's* (supra) further goes on to strengthen the abovesaid view point.

9.1. The word “*shall*” employed by the legislature in the amended Section 202(1) of Cr.P.C. is of primal importance. The Hon’ble Supreme Court, in the judgment of *Vijay Dhanuka* (supra) has held that the usage of word “*shall*” makes the inquiry, required to be undertaken by the Magistrate in case accused resides at a place beyond the jurisdiction of the Magistrate, mandatory/obligatory in nature. To similar effect is the ratio decidendi of the judgment of the Hon’ble Supreme Court in the case of *Deepak Gaba* (supra). Thus, it can be safely inferred that complying with the provision of carrying out inquiry by the Magistrate, in case the accused sought to be summoned, is residing at a place beyond the jurisdiction of the said Magistrate, is mandatory/obligatory in nature & the said Magistrate is not empowered to dispense with the same. Further, the Hon’ble Supreme Court, in the case of *Abhijit Pawar* (supra) and *Sunil Todi* (supra) has held that complying with the provision of Section 202(1) of Cr.P.C. by the Magistrate is not an empty formality and the same is required to be undertaken by the said Magistrate in accordance with the letter and spirit of this mandatory statutory provision.

9.2 More often than not, the question which springs up is as to what methodology is required to be followed by the Magistrate, in case the accused is residing at a place beyond the jurisdictional area of the Magistrate, so as to comply with this mandatory provision. A perusal of Section 202(1) of Cr.P.C. would show that the Magistrate may either inquire into the case himself *or* direct an investigation to be made by a Police Officer *or* by such other person as such Magistrate thinks fit. The concept of “*inquiry*” has been defined under Section



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2(g) of Cr.P.C. This definition states that inquiry means every inquiry undertaken by the Magistrate other than a trial. Therefore, the methodology required to be adopted by a Magistrate has been left to the wisdom/discretion of such Magistrate, to be exercised in accordance with settled principles of justice, good conscience and equity. In other words, the Magistrate may undertake an inquiry in the mode as deemed appropriate by such Magistrate *or* send it to the Police for investigation *or* even to any other person. For instance, in the facts of a given case, the Magistrate may deem it appropriate to call for a report from a revenue officer regarding the description/ownership etc. of a piece of land/property. The wide discretion vested in the Magistrate by the legislature, in terms of statutory provision of Section 202(1) of Cr.P.C., is essentially required to be exercised as an endeavour to obviate the mischief for which the legislature has brought into vogue the amended Section 202(1) of Cr.P.C. w.e.f 23.06.2006.

Though the Magistrate has wide discretion as discussed hereinabove, yet it would be essentially required that the summoning order passed by such Magistrate in a given criminal complaint must reflect that the Magistrate has applied his mind and has complied with the provisions of Section 202(1) of Cr.P.C.

9.3. It is, indubitably, true that the process of the Magistrate complying with the provision of Section 202(1) of Cr.P.C. may take some time and may result into, in some cases, somewhat cumbersome/elaborate exercise. However, it is a settled canon of our jurisprudence that if a statute mandates for a thing to be done in a particular manner then it has to be done in that manner and in no other manner. A three Judges Bench of the Hon'ble Supreme Court in the case of

Mahavir Prasad (supra) and another judgment of the Hon'ble Supreme Court in



case of ***Cherukuri Mani*** (supra) has clearly enunciated that where the statute prescribes a thing to be done in a particular manner following a particular procedure, the same has to be essentially undertaken in the same manner without deviating from the said prescribed procedure/manner.

9.4. As regards the complaints pertaining to Section 138 of Negotiable Instrument Act, a Constitution Bench of the Hon'ble Supreme Court in the case of ***In Re: Expeditious trial of cases under Section 138 of N.I. Act, 1881*** (supra) has held that the procedure [as provided for in Section 202(1) of Cr.P.C.] has to be followed in cases pertaining to Section 138 of N.I. Act as well but the Magistrate has the power to conduct the requisite inquiry under Section 202(1) of Cr.P.C. by taking evidence of witnesses by way of affidavit(s) and can even restrict the said inquiry to examination of documents without insisting for examination of witnesses. A Full Bench of Hon'ble Bombay High Court in the case of ***Bansilal S. Kabra*** (supra) has held that the Constitution Bench judgment in case of ***In Re: Expeditious trial of cases under Section 138 of N.I. Act, 1881*** (supra) deals exclusively with facet of criminal complaints filed under Section 138 of the Negotiable Instruments Act. Thus, in light of these judgments, the Magisterial Courts ought to undertake the methodology as directed for by the Hon'ble Supreme Court in criminal complaints filed under Section 138 of the Negotiable Instruments Act.

9.5. More often than not, it is often pleaded before this Court that the Magisterial Court has not complied with the provision of Section 202(1) of Cr.P.C. (in case the accused is residing outside the jurisdictional area of the said Magistrate) and hence the criminal complaint in question as also the



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summoning order deserve to be quashed. In the considered opinion of this Court; in case the High Court/Revisional Court comes to the conclusion that the mandatory provision as contained in Section 202(1) of Cr.P.C. has not been complied with in such a situation; it is only the summoning order which is liable to be set-aside/quashed & the criminal complaint in question does not deserve to be quashed on this score alone. In other words, the High Court/Revisional Court ought to set-aside the summoning order only with a direction to the concerned Magistrate to consider afresh the aspect of summoning after following the mandatory mode/procedure as prescribed in Section 202(1) of Cr.P.C. Thus, this conundrum stands set at naught.

9.6. In a criminal complaint, in case there are multiple accused sought to be summoned, the mandatory provision of Section 202(1) of Cr.P.C. will be required to be adhered to even if one of such accused is reflected to be residing outside the area jurisdiction of such Magistrate. To clarify by way of an example; in case a criminal complaint is filed against five accused and even one of them is residing beyond the area jurisdiction of the concerned Magisterial Court; the procedure/mode prescribed as discussed hereinabove under Section 202(1) of Cr.P.C. has to be followed. The Hon'ble Supreme Court in case of *Shiv Jatia* (supra) has unequivocally clarified that this aspect of the matter viz. even where one or some accused are residing outside the territorial jurisdiction of the Magistrate before whom the complaint is filed/pending, the mandate of Section 202(1) of Cr.P.C. has to be mandatorily complied with.

10. As a sequel of above-said discussion, the following postulates emerge:



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I. The procedure provided for in Section 202(1) of Cr.P.C.; wherein an accused is residing beyond the jurisdictional area of the concerned Magisterial Court; is mandatory in nature.

II. Even if one of the accused/respondents in the criminal complaint is residing beyond the jurisdictional area of the concerned Magisterial Court, the said Magistrate is required to follow the mandate contained in Section 202(1) of Cr.P.C.

III. (i) The concerned Magistrate has wide discretion to *either* inquire into the case himself *or* direct an investigation to be made by a Police Officer *or* by such other person as such Magistrate thinks fit in the facts and circumstances of a given case.

(ii) The power to order for such investigation is circumscribed only to the extent of limitation contained in proviso to Section 202(1) of Cr.P.C.

(iii) The exercise of discretion by the Magistrate, regarding the mode/method chosen by him for complying with provisions of Section 202(1) of Cr.P.C., has to be undertaken as considered appropriate by such Magistrate in the facts/circumstances of a given case. No straight jacket formula or exhaustive guidelines can possibly be laid down in this regard as every case has its own unique factual matrix.

(iv) There is no gainsaying that in criminal complaints filed under Section 138 of Negotiable Instruments Act, the Courts are required to scrupulously follow the dicta of the judgment of the Hon'ble Supreme Court in ***Suo Motu Writ Petition (Crl.) No.2 of 2020*** in case of ***In Re: Expeditious trial of cases under Section 138 of N.I. Act, 1881*** decided on 16.04.2021.



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IV. In case the High Court/Sessions Court arrive at the conclusion that the summoning order suffers from the vice of non-compliance of Section 202(1) of Cr.P.C. on account of the Magistrate not having carried out requisite inquiry etc. (in case of any accused living beyond the area jurisdiction of such Magistrate), it is only the summoning order which is required to be quashed/set-aside and the matter ought to be remitted back to the said Magisterial Court for taking the fresh decision upon the aspect of summoning after complying with the provision of Section 202(1) of Cr.P.C. In other words, a criminal complaint cannot be quashed/rejected only on account of summoning order suffering from such lapse.

Analysis re facts

11. Now this Court reverts to the facts in hand to ratiocinate thereupon.

12. A perusal of the impugned criminal complaint filed before the JMIC, Ludhiana, Punjab reflects that all the respondents (therein) - accused are residents of District Haridwar and District Dehradun in the State of Uttarakhand. The indubitable conclusion thus, is that all the respondents (therein) sought to be got summoned as an accused are residents of a place beyond the jurisdiction of the Magisterial Court wherein the complaint was filed.

12.1 The order dated 18.11.2016 passed by the Magisterial Court reads as under:

“Sh. Atul Sood, Adv. Counsel for the complainant.

Complaint presented today. It be registered. Report of SHO be called for 13.12.2016.

Dr. Sushil Budh, JMIC, LDH.18.11.2016”



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12.2 The order dated 13.12.2016 passed by the Magisterial Court reads as under:

*“Present: Sh. Atul Sood, Adv. Counsel for the complainant.
Report of SHO not received. Same be called for 18.01.2017. CWI
Babita is present and examined. Now the case is adjourned to 18.01.2017
for remaining preliminary evidence of complaint.
Dr. Sushil Budh, JMIC, LDH.13.12.2016”*

A perusal of this order does not show as to what report was sought for from the SHO (Station House Officer of Police Station) in which context and for what purpose.

12.3 The orders passed by the Magisterial Court on 18.01.2017, 22.02.2017, 27.03.2017, 11.04.2017, 19.05.2017 and 09.06.2017 do not reflect that any report of the SHO (as called for vide order dated 18.11.2016) was ever received or not.

12.4 The impugned summoning order was thereafter passed on 09.06.2017 which is the subject matter of challenge in the present petition. An analytical perusal of the same, does not reflect in any manner whatsoever, that the mandatory provision as contained in Section 202(1) of Cr.P.C. was followed by the Magisterial Court especially in view of the fact that all the respondents (therein) including the petitioner (herein) were residents of District Haridwar and District Dehradun in the State of Uttarakhand which places are beyond the jurisdictional area of the Magisterial Court which has passed the summoning order. In the considered opinion of this Court, the impugned summoning order deserves to be quashed on this score alone.

13. There is another seminal aspect of the matter which has been

completely over-looked by the Magistrate while passing the impugned



summoning order. Para 13 of the complaint, whereby jurisdiction of the Ludhiana Court is spelt out, reads as follows:

“13. That this Hon’ble Court has got jurisdiction to try, entertain and decide the present complaint as the accused have committed the offence within the territory jurisdiction of this Hon’ble Court.”

A bare perusal of the entire material available on record of the Magistrate’s Court makes it abundantly clear that the contents of above-referred paragraph, dealing with the territorial jurisdiction of the Ludhiana Court, is not only bereft of any details but are *ex-facie* false. The entire thrust of the averments in the complaint aims at the alleged fraud/cheating committed by the petitioner (herein) in obtaining of a mutual consent divorce decree from the Family Court at Roorkee in State of Uttarakhand. The petitioner (herein) is the only person summoned, by way of the impugned summoning order, to face trial under Section 420 of IPC. In the factual matrix of the *lis*, it is inexplicable as to how any offence was committed within the territorial jurisdiction of Ludhiana, Punjab. The inevitable conclusion, thus, is that the complaint ought not to have been entertained at all on account of lack of territorial jurisdiction.

14. There is yet another significant facet of the matter in hand.

14.1. A judgment/decree of divorce, by way of mutual consent, was passed by Family Court, Roorkee on 22.09.2014. Two successive applications filed by the respondent (herein)-complainant for setting-aside of this mutual consent divorce decree filed before the said Family Court were dismissed on 11.05.2015 and 04.11.2015 respectively. The appeal preferred against the same by the respondent (herein)-complainant was dismissed as

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14.07.2017 with liberty to take recourse to law, if advised. The impugned criminal complaint, when read diligently, shows that the fulcrum of the same is cheating, alleged to have been committed by the petitioner (herein) by obtaining the said mutual consent divorce decree by way of fraud and extending false promises to the complainant for remarriage in order to obtain such mutual consent divorce decree. The factual bone of contention in the impugned criminal complaint when juxtaposed with the plea(s) raised by the respondent (herein) – complainant in the two applications filed by her before the concerned Family Court at Roorkee (for recall/setting-aside of the divorce decree by way of mutual consent) is, in essence, the same. The liberty reserved in favour of the respondent (herein) – complainant by the Hon’ble Uttarakhand High Court to take recourse in law (if advised) can, by no stretch of legal imagination, be construed as granting permission to file the impugned criminal complaint. Once the entire factual matter has been delved into by the Family Court at Roorkee in Uttarakhand and the Hon’ble High Court of Uttarakhand at Nainital and the same has been decided against the respondent (herein) – complainant; the inevitable conclusion that emerges is that the impugned criminal complaint is nothing but aimed at harassing and wreaking vengeance upon the petitioner by the respondent (herein) – complainant. Therefore, the continuation of the proceedings *qua* the impugned criminal complaint would amount to sheer harassment of the petitioner and hence the same deserves to be quashed.

15. The filing of the criminal complaint by the respondent (herein) – complainant reflects abuse *nay* gross abuse of the process of law and Courts at her instance on account of the nature of allegations made as also



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lack of territorial jurisdiction. A person who does not come to a Court with clean hands is not only dis-entitled to be heard *qua* plea(s) raised by such person but also such litigant(s) should not be allowed to go without a punitive response. It is a settled proposition of law, which has met with repeated approval from the Hon'ble Supreme Court, that unscrupulous litigants should not be allowed to go scot free & they should be put to strict terms and conditions including costs. It is high time to check, with firmness, any such endeavour laced with concealment/falsehood/forum hunting. This principle applies, with more vigour, to a litigant who chooses to pursue criminal prosecution with a quest to abuse the process of law/Courts, with a motive to seek personal vengeance, rather than seeking justice. Such surreptitious attempt(s) needs to be, indubitably, curbed with an iron hand. *Ergo*; the respondent (herein) - complainant deserves to be saddled with costs, which ought to be veritable and real time in nature.

Decision

16. It is, thus, directed as here under:

(i) The impugned criminal complaint No.223 dated 18.11.2016 filed under Sections 406, 498-A, 420, 120-B, 376, 323, 324, 506 of IPC; summoning order dated 09.06.2017 passed by Judicial Magistrate First Class, Ludhiana and all proceedings emanating therefrom are quashed.

(ii) The respondent (herein) – complainant is saddled with costs of Rs.50,000/- which shall be deposited by her with trial Court within eight weeks from today. In case such costs are deposited; the trial Court shall have the same remitted to Punjab State Legal Services Authority, Mohali. In case the said costs are not deposited by the respondent (herein) –



complainant as directed for; the trial Court shall intimate the Deputy Commissioner, Ludhiana who accordingly shall have such costs recovered from the respondent (herein) – complainant by all available lawful means, including as arrears of land revenue and upon realization thereof, the Deputy Commissioner, Ludhiana shall have the same submitted to the trial Court, for further remittance thereof to the Punjab State Legal Services Authority, Mohali. A compliance report be sent by the trial Court as also Deputy Commissioner, Ludhiana to this Court accordingly.

(iii) Registry is directed to transmit a copy of this judgment to the respondent (herein) – complainant, the trial Court as also Deputy Commissioner, Ludhiana for requisite compliance.

17. Pending application(s), if any, shall also stands disposed of.

(SUMEET GOEL)
JUDGE

July 23, 2024
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes