

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Cr.M.No.M-23232 of 2012 (O&M)
DATE OF DECISION : 9.10.2015

Jagraj Singh Sanghera

PETITIONER

VERSUS

Jagdish Kumar and another

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present:- Shri R.S.Cheema, Senior Advocate with
Shri Pawan Girdhar, Advocate for the petitioner.

Shri R.S.Bains for Shri Mohinder Kumar, Advocate
for respondent-1.

Shri Jaspreet Singh Sidhu, A.A.G. Punjab.

MAHESH GROVER, J.

The petitioner impugns the order of the the learned J.M.I.C.,
Amritsar dated 10.1.2012 (Annexure P-5) summoning him to stand trial under
Sections 323,452,506,427,148,149 and 120-B I.P.C. in Criminal Complaint
No.552/11 dated 31.10.2011 titled "*Jagdish Kumar v. Sarabjit Singh and others*".

It may not be relevant to go into the allegations stated in the complaint pursuant to which the petitioner has been summoned in view of the limited issue raised before this Court regarding the non-compliance of the provisions of Section 202 of the Code of Criminal Procedure.

Learned counsel for the petitioner contends that non-compliance of the provisions of Section 202 Cr.P.C. would vitiate the process adopted by the court warranting interference by this Court in view of the settled law in this regard. Section 202 Cr.P.C. is extracted here below :-

“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) whether 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 enquiry 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.”

With reference to the above, learned counsel for the petitioner contends that the address as given in the complaint by the complainant himself indicates that he is not a resident of Amritsar. For the purpose of reference, the description of the petitioner as given in the complaint as respondent No.2 therein is extracted here below :-

“Jagraj Singh Sanghera C/o M.S.M., Discovery Private Ltd.
Unit No.5,6,7 & 8, Time Tower, Ground Floor, M.G.Road,
Gurgaon-122 002.”

Even in this petition, the petitioner has categorically averred in para-1 that he is a resident of Gurgaon and competent to invoke the inherent jurisdiction in this regard under Section 482 Cr.P.C. The complainant has filed his reply to the instant petition without disputing this fact. This would lead to a conclusion that the complainant does not dispute the petitioner being a resident of

Gurgaon.

If that be so, then in terms of Section 202 Cr.P.C., it would be incumbent upon the trial Court to postpone the issue of process to comply with the mandate of Section 202 Cr.P.C., the accused being the resident beyond the Magistrate's jurisdiction.

The Hon'ble Supreme Court in **Ramdev Food Products Private Ltd. v. State of Gujarat** 2015 (2) R.C.R. (Criminal) 372 has observed as follows :-

“15. Cognizance is taken by a Magistrate under Section 190 In Chapter XIV) either on “receiving a complaint”, on “a police report” or “information received” from any person other than a police officer or upon his own knowledge.

Chapter XV deals exclusively with complaints to Magistrates. Reference to Sections, 202, in the said Chapter, shows that it provides for “postponement of issue of process” which is mandatory if accused resides beyond the Magistrate's jurisdiction (with which situation this case does not concern) and discretionary in other cases in which event an enquiry can be conducted by the Magistrate or investigation can be directed to be made by a police officer or such other person as may be thought fit “for the purpose of deciding whether or not there is sufficient ground for proceeding”. We are skipping the proviso as it does not concern the question under discussion. Clause (3) provides that if investigation is by a person other than a police officer, he shall have all the powers of an officer incharge of a police station except the

power to arrest.

16. Chapter XII, dealing with the information to the police and their powers to investigate, provides for entering information relating to a 'cognizable offence' in a book to be kept by the officer incharge of a police station (Section 154) and such entry is called "FIR". If from the information, the officer incharge of the police station has reason to suspect commission of an offence which he is empowered to investigate subject to compliance of other requirements, he shall proceed, to the spot, to investigate the facts and circumstances and, if necessary, to take measure, for the discovery and arrest of the offender (Section 157(1))."

In view of the above, when the compliance of the provisions of Section 202 Cr.P.C. has been held to be mandatory, it was an obligation upon the learned trial Court to postpone the process in view of the petitioner being a resident of a place beyond its jurisdiction which fact is manifested in the complaint itself.

In view of the above, the petition is accepted on the aforesaid limited issue to set aside the summoning order Annexure P-5 qua the petitioner.

October 9, 2015
GD

(MAHESH GROVER)
JUDGE