

In the High Court of Punjab and Haryana at Chandigarh

CRM M- 22399 of 2015 (O&M)

Date of Decision: July 14, 2015

Navpreet Kumar and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment? **Yes**
- 2) To be referred to the Reporters or not? **Yes**
- 3) Whether the judgment should be reported in the Digest? **Yes**

Present: Mr. Ravi Kant Sharma, Advocate,
for the petitioners.

Paramjeet Singh, J. (Oral)

Instant petition has been filed under Section 482 of the Code of Criminal Procedure for quashing criminal complaint (Annexure P/1), summoning order dated 15.01.2011 (Annexure P/6) and order dated 10.06.2015 (Annexure P/12) whereby application under section 245(1) of the Code has been dismissed.

The petitioners herein have been arrayed as accused in criminal complaint filed by the respondent no. 2 herein for the alleged offences u/s 323/324/341/342/307/406/420/452/506/34 IPC.

Brief facts of the case are that respondent no.2 (complainant)

filed a criminal complaint against the petitioners for aforementioned offences. Thereafter, complainant examined himself and other witnesses on oath, namely, Mohinder Singh Complainant as CW1, Gurmeet Kaur as CW2, Hardev Singh as CW3 and Balwinder Singh as CW4. The learned Judicial Magistrate First Class, Tarn Taran, after applying his mind to pre-summoning evidence, vide order dated 15.01.2011 (Annexure P/6), summoned the petitioners under Sections 420, 452 read with Section 34 of the Indian Penal Code. In pursuance of summons, petitioners appeared in court. After appearance of the petitioners/accused, complainant examined himself and other witnesses for pre-charge purpose and petitioners cross-examined the witnesses and at that stage petitioners filed an application under Section 245(1) of the Code of Criminal Procedure (hereinafter referred to as the "Code") for discharge, which has been dismissed by the trial Court vide order dated 10.06.2015 (Annexure P/12) by observing as under:-

“All the witnesses corroborated each other/s versions. This Court is not to go through the merits of the case. At this stage, only prima facie case is to be seen against the accused persons. It is argument of learned counsel for the applicant/accused that there are material contradictions in the cross examination of these witnesses. Regarding this it is mentioned that the date of occurrence is mentioned by all the witnesses in corroboration of each other. Any contradiction with preliminary evidence cannot be considered at this stage as the accused are appearing and they have cross examined

the witnesses. From the evidence on record, there are sufficient prima facie evidence against the accused persons. So there is no ground to discharge them at this stage. In these circumstances, the application is considered as without merits and is dismissed accordingly. Case is adjourned to 18.07.2015 for framing charge against all the accused.”

Hence, this petition.

I have heard learned counsel for the petitioners and perused the record.

Learned counsel for the petitioners contends that petitioners are residents of Khanna, District Ludhiana beyond the area in which the Magistrate exercise the jurisdiction. Learned counsel invites my attention to Section 202 (1) of the Code, and contends that it is mandatory for the Magistrate to inquire into the complaint and direct investigation to be made by the police officer or authorised person. No inquiry has been conducted by the Magistrate in this case. Learned counsel further contends that under Section 200 of the Code, statements of the complainant and its witnesses are required to be recorded before summoning any person. Learned counsel, to substantiate his contentions, relied upon **SK Bhowmik vs SK Arora 2007(4) RCR(Cri) 650** and **DSM Pharma Chemicals Venlo B.V. Versus Vijay Kumar Garg, 2011(2) R.C.R. (Criminal) 813**. He further contends that from the very reading of the contents of the complaint, no offence is made out. He further contends that if there is any variance in the statement of the complainant and

averments in the complaint, then summoning order could not be passed. Learned counsel refers to the complaint and the complainant's evidence that the amount alleged to be paid is at variance with the averments in the complaint and in the statements recorded on oath before the Court. Learned counsel further contends that Section 203 of the Code categorically states that Magistrate should dismiss the complaint in view of variation in the complaint and the statements. Learned counsel vehemently contends that discharge application has been wrongly dismissed and order for framing of charge is not sustainable.

I have considered the contentions raised by learned counsel for the petitioners and perused the complaint, statements of CWs and the impugned orders and entire other material placed on record of this petition.

Before proceeding to deal with the contentions raised by learned counsel for the petitioners, it would be appropriate to examine the scope of Chapter XV of the Code which deals with the complaints to Magistrates. It would be appropriate to produce relevant provision of the Code:-

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

S. 2(h) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is

authorised by a Magistrate in this behalf;

S. 156 (1) *Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*

(2) No proceeding of a police officer in any case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.

*Chapter xv
Complaints to Magistrates*

S. 200. Examination of complainant - *A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the 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.

S. 201. *Procedure by Magistrate not competent to take cognizance of the case - If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,-*

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

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.

203. Dismissal of complaint- *If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing,*

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 accused, or

(b) a warrant- case, he may issue a warrant, or, 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.”

Chapter XII of the Code deals with the information to the police and their powers to investigate. Chapter XV of the Code deals with complaint to the Magistrate. It is open to the complainant to adopt the course under section 154 or 200 of the Code simply because there is a right under section 154 to lodge an FIR in a cognizable case with the police consequent upon which police would investigate into the matter. It cannot be said that right under Section 200 is not available for the purpose of taking recourse to make a complaint to the Magistrate. The Magistrate takes cognizance of an offence when a complaint is made to him under Section 190 (1)(a) of the Code. The examination of the complainant on

oath adds to the credibility of complainant at the initial stage. The complaint is the foundation of entire criminal proceedings. Once the Magistrate after taking notice of the accusation made in the complaint has proceeded to record the sworn statements of the complainant and the witnesses, it amounts to taking cognizance of the offence / offences. The Magistrate need not specifically state in his order that he has taken cognizance of the offence/offences.

Under Section 200 of the Code a Magistrate taking cognizance of an offence on complaint, is empowered to examine upon oath the complainant and the witnesses produced by the complainant before him. If the complaint in writing is made by the public servant then examination of complainant or his witnesses is not required. But under Section 202 of Code, any Magistrate, on receipt of a complaint of offence/offences of which he is authorized to take cognizance, shall hold an inquiry himself or direct investigation by the police officer or such other person as he thinks fit and may, if he think fit, postpone the issue of process against the accused where the accused is residing at a place beyond the area in which he exercises jurisdiction.

Now the question arises what type of inquiry under Section 202(1) of the Code is contemplated. In Section 202(1) of the Code words used are “either inquire into the case himself” or “direct an investigation to be made by a police officer” or “by such person as he thinks fit”. The

“inquiry” has been defined in Section 2(g) of the Code and “investigation” has been defined in Section 2(h) of the Code. From the perusal of definition of “inquiry” and “investigation”, it is crystal clear that inquiry is conducted by the Magistrate and investigation by the police officer. The inquiry contemplated under Section 202(1) of the Code has been explained in Section 202(2) of the Code. Perusal of Section 202(2) of the Code shows that recording of statements of witnesses on oath is also part of the inquiry suggested in Section 202(1) of the Code. The learned Magistrate has ample power to enlarge the scope of inquiry for the purpose of coming to a prima facie conclusion that a case has been made out for issuance of process under the aforesaid provision of law. He can undertake a thorough inquiry as to the offence/ offences complained of. Thereafter he can arrive at a conclusion whether prima facie case is made out for issuance of process or not. In other words, whether or not there is sufficient ground for the Magistrate to proceed further on account of the allegations mentioned in the complaint and pre-summoning evidence of the complainant and his witnesses. But examination of the witnesses on oath during the inquiry embarked upon by him under Section 202 of the Code is akin to the examination of witnesses as contemplated under Section 200 of the Code.

Once the sworn statements of the complainant and his witnesses have been recorded at the pre-summoning stage, this amounts to inquiry by the Magistrate himself. It is not mandatory for the Magistrate

that he should send the case for investigation by the police official when accused are residing outside area of his jurisdiction. From the language of Section 202(1) of the Code, it is clear that the Magistrate has three options either inquire into the case himself or direct the police officer for investigation or any other person as he thinks fit. It would be appropriate to clarify here that while directing an investigation by a police officer, the Magistrate can even specify the points on which such investigation is to be carried out. The investigation ordered by the Magistrate under Section 202 (2) of the Code is limited in scope then the investigation conducted by the police after following the procedure under Section 154 of the Code i.e. after registration of FIR. Chapter XII of the Code provides detailed procedure commencing from Section 154 i.e. from the stage of getting first information relating to the commission of a cognizable offence till the filing of challan under Section 173 of the Code. The same cannot be applied in the complaint cases. In my opinion, the scope of inquiry under Section 156(3) of the Code at the pre-cognizance stage is much wider whereas the scope of inquiry under Section 202 of the Code is extremely limited only to an extent of ascertaining the truth or falsehood of the allegation made in the complaint, thereafter, coming to a conclusion whether there are sufficient grounds to issue process or not.

It would be also appropriate to refer to the settled position of law with regard to scope of inquiry under Sections 156 and 202 of the Code.

In *Chandra Deo Singh Vs. Prakash Chandra Bose alias Chabi Bose and another*, AIR 1963 (SC) 1430, Hon'ble Supreme Court has held as under:

“7. Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued ; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interest of justice. But beyond that, he cannot go. It was, however, contended by Mr. Sethi for respondent No. 1 that the very object of the provisions of Ch. XVI of the Code of Criminal Procedure is to prevent an accused person from being harassed by a frivolous complaint and, therefore, power is given to a Magistrate before whom complaint is made to postpone the issue of summons to the accused person pending the result of an enquiry made either by himself or by a Magistrate

subordinate to him. A privilege conferred by these provisions can, according to Mr. Sethi, be waived by the accused person and he can take part in the proceedings. No doubt, one of the objects, behind the provisions of Section 202, Criminal Procedure Code is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under Section 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry. It is true that there is no direct evidence in the case before us that the two persons who were examined as court witnesses were so examined at the instance of respondent No. 1 but from the fact that they were persons who were alleged to have been the associates of respondent No. 1 in the first information report lodged by Panchanan

Roy and who were alleged to have been arrested on the spot by some of the local people, they would not have been summoned by the Magistrate unless suggestion to that effect had been made by counsel appearing for respondent No. 1. This inference is irresistible and we hold that on this ground, the enquiry made by the enquiring Magistrate is vitiated. In this connection; the' observations of this court in [Vadilal Panchal v. Dattatraya Dulaji, \(1961\) 1 SCR at p.9](#) may usefully be quoted:

“The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage for the person complained against can be legally called upon to answer the 'accusation made against him only when a process has issued and he is put on trial.”

8. Coming to the second ground, we have no hesitation in holding that the test propounded by the learned single judge of the High Court is wholly wrong. For determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is "sufficient ground for proceeding" and not whether there is sufficient ground for the conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. A number of decisions were cited at the bar in which the question of the scope of the

*enquiry under section 202 has been considered. Amongst those decisions are : **Parmanand Brahmachari v. Emperor, AIR 1930 Patna 30; Radha Kishun Sao v. S. K. Misra, AIR 1949 Patna 36; Ramkisto Sahu v. State of Bihar, AIR 1952 Patna 125; Emperor v. J. A. Finan, AIR 1931 Bombay 524 and Baidya Nath Singh v. Muspratt, ILR 14 Calcutta 141.** In all these cases, it has been held that the object of the provisions of Section 202 is to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations, of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality, of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.”*

In *Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and others, AIR 1976 SC, 1947*, Hon'ble Supreme Court has held as under:-

“3. In [Chandra Deo Singh v. Prokash Chandra Bose](#), (1964) 1 SCR 639, this Court had after fully considering the matter observed as follows:

"The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant."

Indicating the scope, ambit of Section 202 of the Code of Criminal Procedure this Court in [Vadilal Panchel v. Dattatrya Dulaji](#), (1961) 1 SCR 1=(AIR 1960 SC 1113) observed as follows:

"Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry

under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can` be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial."

4. *It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited - limited only to the ascertainment of the 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 advertting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."*

In *Devarapalli Lakshminarayana Reddy and others vs. V.*

Narayana Reddy and others, AIR 1976 SC 1672, Hon'ble Supreme Court

has considered the scope of investigation under Sections 156(3) and 202 (1) of the Code and held as under:-

“Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while section 202 is in Chapter XV which bears the heading "Of complaints to Magistrates". The power to order police investigation under section 156(3) is different from the power to direct investigation conferred by section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. 'That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In

such a situation, the Magistrate is empowered under Section 202 to direct within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."

In *Kewal Krishan vs. Suraj Bhan and another*, AIR 1980 SC

1780, the Hon'ble Supreme Court has held as under:-

9. *In the instant case, there was prima facie evidence against Suraj Bhan accused which required to be weighed and appreciated by the Court of Session. At the stage of Sections 203 and 204, Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202, Criminal Procedure Code, there is prima facie evidence in support of the charge leveled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This Court has held in Ramesh Singh's case (ibid), that even at the stage of framing; charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial,*

is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of [Sections 202/204](#), if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session.”

In *Mohinder Singh vs. Gulwant Singh and others, 1992(2)*

R.C.R. (Criminal) 589, Hon'ble Supreme Court has held as under:-

“11. This Court as well as various High Courts in a catena of decisions have examined the gamut and significance of [Section 202](#) of the Code and settled the principle of law, the substance of which is as follows:

“The scope of enquiry under [Section 202](#) is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under [Section 204](#) of the Code or whether the complaint should be dismissed by resorting to [Section 203](#) of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under [Section 204](#) of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise

*of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under [Section 202](#) of the Code. To say in other words, during the course of the enquiry under [Section 202](#) of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. **Vide Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker, 1961(1) SCR 1: AIR 1960 Supreme Court 1113 and Pramatha Nath Talukdar v. Saroj Ranjan, 1962 Supp. (2) SCR 297**".*

In *Rosy vs. State of Kerala, (2000) 2 SCC 230*, Hon'ble Supreme Court has held as under:-

"36. The aforesaid [Section 200](#) requires a Magistrate taking cognizance of an offence on a complaint to examine upon oath the complainant and the witnesses present, if any. The proviso to the said section carves out an exception in cases where a complaint is filed by a public servant acting or purporting to act in the discharge of his official duties or in cases where the Court has made the complaint. In such case complainant and witnesses need not be examined. In such cases, if he is satisfied that there is sufficient ground for proceeding, he can straightway issue process. At this stage, the Magistrate has three options :

(i) to issue process on the basis of complaint, if he is satisfied that there is sufficient ground for proceeding against

the accused (Sec. 204); or

(ii) to dismiss the complaint (Sec. 203); or

(iii) to hold an enquiry -

(a) by himself, or

(b) by directing investigation by the Police Officer,

(c) or by other person, for the purpose of deciding whether or not there is sufficient ground for proceeding.

37. *It is only if the Magistrate decides to hold the inquiry the proviso to sub-section (2) of [Section 202](#) would come into operation. If the offence is triable exclusively by the court of Sessions, the Magistrate himself has to hold the inquiry and no direction for investigation by police shall then be made. Inquiry can be held for recording evidence on oath and if he thinks fit. Sub- section (2) of [Section 202](#) gives discretion to the Magistrate to record evidence of witnesses on oath. To this discretionary power, the proviso carves out an exception. It provides that for the offence triable exclusively by the court of Session the Magistrate shall call upon the complainant to produce all his witnesses and examine them on oath. Then the next stage after holding inquiry is passing of appropriate order of either dismissal of the complaint or issue of process. That is provided under [Sections 203](#) and [204](#) of the Code. Hence, on receipt of the complaint, the Magistrate by following the procedure prescribed under [Section 200](#) may issue process against the accused or dismiss the complaint. [Section 203](#) specifically provides that after considering the statement on oath, if any, of the complainant and witnesses and the result of the inquiry or investigation, if any, under [Section 202](#), the Magistrate is of the opinion that there is no*

sufficient ground for proceeding, he shall dismiss the complaint. For dismissal of complaint, he is required to briefly record his reasons for so doing. In other cases, he has to issue process i.e. either summons or warrants as the case may be as provided under Section 204. However, no summons or warrant is to be issued against the accused until a list of the prosecution witnesses has been filed. Therefore, the question of complying with the proviso to sub-section (2) of [Section 202](#) would arise only in cases where the Magistrate before taking cognizance of the case decides to hold the inquiry and secondly in such inquiry by him, if he decides to take evidence of witnesses on oath. But the object and purpose of holding inquiry or investigation under [Section 202](#) is to find out whether there is sufficient ground for proceeding against the accused or not and that holding of inquiry or investigation is not an indispensable course before issue of process against the accused or dismissal of the complaint. It is an enabling provision to form an opinion as to whether or not process should be issued and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath.

38. In a case, Ranjit Singh v. The State of Pepsu (now Punjab), AIR (1959) SC 843, where the Sub-Inspector of Police was convicted under [Section 193 IPC](#) by First Class Magistrate, it was contended that the procedure adopted by the Magistrate was erroneous because he did not hold an enquiry as required under [Sections 200 and 202](#) of the Code. This Court negated the said contention and held thus :

"That contention is equally untenable because under

Section 200 proviso (aa) it is not necessary for a Magistrate when a complaint is made by a Court to examine the complainant and neither *Section 200* nor *Section 202* requires a preliminary enquiry before the Magistrate can assume jurisdiction to issue process against the person complained against."

Further, it is settled law that the inquiry under *Section 202* is of limited nature. Firstly, to find out whether there is prima facie case in issuing process against the person accused of the offence in the complaint and secondly, to prevent the issue of process in the complaint which is either false or vexatious or intended only to harass such a person. At that stage, the evidence is not to be meticulously appreciated, as the limited purpose being of finding out "whether or not there is sufficient ground for proceeding against the accused". The standard to be adopted by the Magistrate in scrutinising the evidence is also not the same as the one which is to be kept in view at the stage of framing charges. At the stage of inquiry under *Section 202* Cr.P.C. accused has no right to intervene and that it is the duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. (Re : Chandra Deo Singh v. Prakash Chandra Bose & Anr., [1964] 1 SCR 639, Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker, [1961] 1 SCR 1, Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar, [1962] Supp. 2 SCR 297, Nimaljit Singh Hoon v. The State of West Bengal and Another, [1973] 3 SCC 753 and Mohinder Singh v. Gulwant Singh and Others, [1992] 2 SCC 213.

39. This Court in Kewal Krishan v. Suraj Bhan and Another, [1980] Supp. SCC 499, dealt with the case where instead of finding out prima facie case made out against the accused, the Magistrate passed an order by meticulously appreciating the evidence in a case exclusively triable by a Sessions Court, at the stage of Sections 203 and 204. The Court held that the Magistrate committed an irregularity by exceeding his jurisdiction and observed thus :

"At the stage of Sections 203 and 204, Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see "whether on a cursory perusal of the complaint and the evidence recorded during the preliminary in-quiry under Sections 200 and 202, Criminal Procedure Code, there is prima fade evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding against the accused."

The Court further made it clear thus :

"At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial Court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204, if there is prima fade evidence in support of the allegations in the complaint relating to a case

exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session."

40. *In this view of the matter it is apparent that the High Court erred in holding that there was breach of mandatory provisions of the proviso to Section 202 (2) of the Code and the order of committal is vitiated and, therefore, requires to be set-aside. The High Court failed to consider proviso to Section 200, particularly proviso (a) to the said Section and also the fact that inquiry under Section 202 is discretionary for deciding whether to issue process (under Section 204) or to dismiss the complaint (under Section 203). Under Section 200, on receipt of the complaint, Magistrate can take cognizance and issue process to the accused. If the case is exclusively triable by the Sessions Court, he is required to commit the case to the court of Sessions".*

In ***Nupur Talwar Vs. CBI, (2012) 11 SCC 465***, the Hon'ble Supreme Court held as follows:

"No doubt, as stated in sub-section (1) of Section 202 itself, the object of the inquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the inquiry has to do this only with reference to the intrinsic quality of the statements made before him at the inquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant."

In ***Manharibhai Muljibhai Kakadia and another vs. Shashi***

Bhai Mohanbhai Patel and another, (2012) 10 SCC 517, the Hon'ble Supreme Court has held as under:-

23. *Section 202* of the Code has twin objects; one, to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate himself may hold an inquiry under *Section 202* of the Code or direct an investigation to be made by a police officer. The dismissal of the complaint under *Section 203* is without doubt a pre-issuance of process stage. The Code does not permit an accused person to intervene in the course of inquiry by the Magistrate under *Section 202*. The legal position is no more *res integra* in this regard. More than five decades back, this Court in *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and another* MANU/SC/0059/1960: (1961) 1 SCR 1 with reference to *Section 202* of the Criminal Procedure Code, 1898 (corresponding to *Section 202* of the present Code) held that the inquiry under *Section 202* was for the purpose of ascertaining the truth or falsehood of the complaint, i.e., for ascertaining whether there was evidence in support of the complaint so as to justify the issuance of process and commencement of proceedings against the person concerned.

25. In *Smt. Nagawwa* MANU/SC/0173/1976: (1976) 3 SCC 736, this Court had an occasion to consider the scope of the inquiry by the Magistrate under [Section 202](#) of the old Code. This Court referred to the earlier two decisions in *Vadilal Panchal* MANU/SC/0059/1960: (1961) 1 SCR 1 and *Chandra Deo Singh* MANU/SC/0053/1963: 1964(1) SCR 739 and in para 4 of the Report held as under:

“4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under [Section 202](#) of the Code of Criminal Procedure is extremely limited — limited only to the ascertainment of the 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. In fact it is well settled that in proceedings under [Section 202](#) the accused has got absolutely no *locus standi* and is not entitled to be heard on the question whether the process should be issued against him or not.”

In *Vijay Dhanuka etc. vs. Najima Mamtaj etc.*, 2014(3)

R.C.R. (Criminal) 793, Hon'ble Supreme Court has held as under:-

“10. Section 202 of the Code, *inter alia*, contemplates postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be

made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not. The words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” was inserted by Section 19 of Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23rd of June, 2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that 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.”

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 mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and 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.”

(underlining ours)

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.”*

In *National Bank of Oman vs. Barakara Abdul Aziz and another, (2013) 2 SCC 488* having found that the Chief Judicial Magistrate, Ahmednagar had failed to carry out any inquiry or order investigation as contemplated under the amended provision of Section 202 of the Code, especially when the accused was residing outside the jurisdiction of CJM, Ahmednagar, the Hon'ble Supreme Court held that the CJM committed an error in issuing the process without adopting either of the aforesaid two courses. The scope of the inquiry is restricted to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process could be issued or not.

So far as the reliance placed on the authorities cited by the learned counsel for the petitioners is concerned, this Court in *S.K.Bhowmik's case (supra)* held that examination of the complainant and the witnesses contemplated under Section 200 of the Code and the inquiry mandated under Section 202 of the Code are totally different. Mere examination of the witnesses cannot be construed to be an inquiry held under Section 202 of the Code, it was observed therein. In the aforesaid case, it has been noticed that the complainant examined himself as CW-1 and yet another witness as CW-2. Despite the examination of those witnesses, it was held, in the aforesaid decision, that the inquiry was not held as contemplated under Section 202 of the Code. **DSM Pharma Chemicals Venlo case** (supra) has also decided on the same lines. It appears that Section 202(2) of the Code was not brought to the notice of

this Court when decisions were taken in *S.K.Bhowmik's case* and *DSM Pharma Chemical Venlo's case (supra)*. Therefore, the aforesaid decisions are *per incuriam*. So, the judgments referred by the petitioners are of no help to the petitioners.

Now, in the light of aforesaid discussion, I would deal with the contentions raised by learned counsel for the petitioners.

Admittedly, in the present case, the Magistrate examined on oath the complainant and three of his witnesses which are fundamental part of the inquiry contemplated under Section 202(1) of the Code. Section 202(2) of the Code explains how the inquiry under sub-Section (1) shall be conducted. As per this, Magistrate may take evidence of witnesses on oath before issuing process. It can be summed up that when Magistrate taking notice of the accusation averred in the complaint proceeds to record sworn statements of the complainant and the witnesses it amounts to taking cognizance of offence/offences. The purpose of inquiry under Section 202 of the Code is for ascertaining the truth or falsehood of the complaint i.e. for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process, and not whether there are sufficient grounds for conviction. In the present case, Magistrate has complied with the provisions of Section 202 of the Code and after finding sufficient ground to proceed with the case, issued the process. The procedure of inquiry to be conducted by the Magistrate under Section 202 of the Code has been followed i.e. as explained in Section 202(2) of the

Code about the inquiry to be conducted, besides examination of complainant on oath, the statements of his witnesses have also been recorded and cannot be held to be erroneous at all. Hence, this contention is devoid of merit on the face of record.

Even at the cost of repetition, so far as the contention of learned counsel for the petitioners that it is mandatory for the Court to hold inquiry under Section 202 of the Code, is concerned, the Magistrate himself in this case held inquiry when he started recording the statements on oath of the complainant and his witnesses as preliminary evidence at the pre-summoning stage. The Magistrate looked into the allegations made in the complaint and the statements of witnesses on oath recorded before him, which means he himself inquired into the matter as per provisions of Section 202(1) of the Code as accused were residing outside area of the jurisdiction and thereafter summoning order has been passed. In the present case, Magistrate has conducted inquiry himself as explained in Section 202(2) of the Code. In the present case, the petitioners appeared before the Court, thereafter pre-charge evidence was also recorded and petitioners cross examined the complainant and his witnesses. Thereafter, they have raised objections that proper inquiry has not been conducted and moved application for discharge. They are precluded to raise such an objection at this stage. They have accepted the proceedings and no prejudice has been caused to them in any manner.

So far as order of framing of charge and application for

discharge is concerned, after considering the pre-charge evidence, the Court has rightly dismissed the application for discharge moved under Section 245(1) of the Code. The learned Magistrate has categorically recorded a finding that from the perusal of the evidence on record, there is sufficient prima facie evidence to frame the charge against the petitioners. The Magistrate at the stage of framing charge is not expected to go deep into the probative value of the evidence recorded. So has been held by Hon'ble Supreme Court in number of judgments. In this regard, reference can be made to following judgments:-

Hon'ble Supreme Court in *Onkar Nath Mishra and others vs. State (NCT of Delhi) and another, (2008) 2 SCC 561* has held that at the stage of framing of charge the Court is not expected to go deep into the probative value of the material on record. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

Hon'ble Supreme Court in *P. Vijayan vs. State of Kerala and another, 2010(1) RCR (CrL.) 826 (SC)* has also held that at the time of framing of charge the probative value of the material on record cannot be gone into and the material brought by the prosecution has to be accepted as true for that purpose.

In view of this, contention of the counsel for the petitioners is devoid of merit.

So far as the contention with regard to variance in the

statement of the complainant and the averments in the complaint are concerned, the petitioners have approached this Court under Section 482 of the Code. This Court has no power to appreciate the evidence at this stage. It is the function of the trial Court as well as the lower appellate Court. If this is appreciated here, it would rather cause prejudice to the rights of the petitioners at trial. Said contention is also devoid of merit, hence rejected.

The next disturbing feature of this petition is that the petitioners have impleaded a Judicial Officer as a party in the present petition. Impleading of a judicial officer is merely on the basis of affidavit of wife of petitioner no.1. Affidavit of Harkirat Kaur (Annexure P/13) who is stated to be wife of Navpreet Kumar, petitioner no.1 herein. The allegations in this affidavit are that Navpreet Kumar had got married with Harkirat Kaur, daughter of Jagmohan Singh, who is practicing Advocate at Khanna, against the wishes of parents of Harkirat Kaur. Said Jagmohan Singh tried to involve petitioner no.1 and his family members in various criminal cases and the said judicial officer is helping in issuance of summoning orders against petitioner no.1 and others in a false criminal cases.

The allegations, on the face of it cannot be accepted, which are frivolous, false and vague. Firstly because said Jagmohan Singh is not a party in the present petition; secondly, there is no substantive material on record to support the alleged allegations against the judicial officer. Mere

affidavit of Harkirat Kaur is not sufficient to implead judicial officer in the present proceedings. There are no direct allegation against the judicial officer who passed the summoning order, nor he is impleaded as party in this petition. In absence of pre-existing bias, such alleged allegations cannot be accepted. This Court is not a Court of fact. It is common that frivolous allegations are levelled against judicial officers without any basis and cogent reasons. Now-a-days, there is growing tendency among disgruntled litigants, often ill advised to level allegations. This leads to scandalization of the Courts and judicial officers. Hon'ble Supreme Court in *Radha Mohan Lal vs. Rajasthan High Court, (2003) 3 Supreme Court Cases 427* and *Shamsher Singh Bedi vs. High Court of Punjab and Haryana, 1996(1) RCR (Crl.) 61*, has held that counsel cannot shirk from his responsibility while drafting such petitions and levelling baseless and false allegations.

In view of above, present petition is apparently frivolous, vexatious, just wastage of precious time of the Court. Dismissed with costs of Rs.25,000/- to be deposited with the District Legal Services Authority, Tarn Taran. If the said amount is not deposited within two months from today, same shall be recovered as arrears of land revenue.

July 14, 2015
vkd

[Paramjeet Singh]
Judge