

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.R.M-M No.30855 of 2015
Date of Decision : 16.11.2015**

Mohit and another

..... Petitioners

Versus

Ankit and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Petitioners present in person.

Mr. Amit Rana, Advocate
for the respondent No.1.

1. Whether Reporters of local papers 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?

AJAY TEWARI, J. (Oral)

This petition has been filed for quashing the main order dated 18.08.2015 (Annexure P-1) summoning the petitioners passed in Criminal Complaint No.RBT-111-I of 2014 under Sections 323, 341, 506, 34 IPC and Section 30 of the Arms Act.

The main argument of the petitioners is that once the Magistrate had at the initial stage ordered further investigation under Section 202 Cr.P.C. it was incumbent upon him to have considered the report of inquiry and then to arrive at a just decision whether to proceed further or not but in the present case the report has not been considered.

Coming to this conclusion he has relied upon the following sentence in the summoning order:-

“2.....After recording of preliminary evidence of the complainant, the instant complaint was sent to concerned police station for investigation under Section 202 of Code of Criminal Procedure, 1973. The report under Section 202 of Code of Criminal Procedure, 1973 has been received on 28.04.2014.

3. I have heard the complainant, his counsel and perused the case file very carefully.

4.Hence, after perusing the contents of the complaint and preliminary evidence, this Court is of view that prima-facie there are sufficient ground to proceed against all the accused for the commission of offence punishable under Sections 323, 341, 506 read with Section 34 of Indian Penal Code, 1860 and Section 30 of the Arms Act. Let they be summoned for the above said offences for 24.07.2014 on filing of PF, RC, list of witnesses and copy of complaint etc. within 7 days.”

The petitioners have argued that having not mentioned about the investigation report in paragraph No.4 is clear proof of the fact that the Magistrate has not considered the same. For supporting his contention, the petitioners have relied upon the judgment of the Hon'ble Supreme Court in the matter of **Devarapalli Lakshminarayana vs. V. Narayana Reddy and others**, reported as **1976 AIR 1672**, wherein it was observed as follows:-

“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."

The petitioners have further relied upon the judgment of this

Court in the matter of ***Yash Paul Mahajan and another vs. State of***

Haryana and another, passed in CRM-M-30984-2008, decided on 13.09.2012, wherein it was held as follows:-

“A perusal of the impugned summoning order dated 1.9.2008 (Annexure P-23) reveals that the trial Court, while passing the impugned summoning order, had failed to refer to the report submitted by the Deputy Superintendent of Police, Palwal under [Section 202 Cr.P.C](#) Since the trial Court itself had called for the report under [Section 202 Cr.P.C](#), it was incumbent on the trial Court to have considered the same while passing the impugned summoning order. The fact that the trial Court has passed the impugned summoning order without making any reference to the report submitted by the police under [Section 202 Cr.P.C](#) has caused serious miscarriage of justice to the petitioners.”

The petitioners have further relied upon the judgment of this Court in the matter of ***Vinod Kumar Dhawan and another vs. Harnarain Singh, passed in CRM-M-9851-2012, decided on 02.07.2013***, wherein it was held as follows:-

“In the present case, admittedly, complainant had initially sought house loan from the Bank and then cash credit limit. As per the Bank, complainant had sought conversion of the loan vide letter dated 30.06.2007, whereas, the complainant had denied having made any such application. Complainant led his preliminary evidence in support of his complaint. The Trial Court sought report from the concerned Station House Officer by invoking provisions under [Section 202 Cr.P.C](#) The said report prepared by Assistant Sub-Inspector, CIA Staff dated 27.01.2009 has been placed on record as Annexure P-18. As per the said inquiry report, it was found that complainant had signed various documents including stamp papers while

seeking conversion of the loan. A perusal of the impugned summoning order dated 15.07.2011 reveals that the report Annexure P-18 has not been considered by the Trial Court while passing the summoning order. The Trial Court was required to have referred to the report submitted under [Section 202 Cr.P.C](#) to arrive at a just decision while passing the summoning order. The fact that the report Annexure P-18 has not been considered while passing the summoning order has caused great miscarriage of justice to the petitioners.”

Learned counsel for the complainant-respondent No.1 has drawn the attention of this Court to paragraphs Nos.2 and 3. It is his contention that though in paragraph No.4 the summoning court has not specifically referred to the complaint yet from the combined reading of paragraphs Nos.2, 3 and 4 it is clear that the summoning court was aware of the fact that the report had been received and then goes on to refer that he had perused the case file very carefully. It is in these circumstances that the learned counsel for the respondent No.1 has argued that the mere omission to mention about investigation report in paragraph No.4 can not lead to the conclusion that the summoning court was oblivious to it or did not consider the same.

The facts of the cases relied upon by the petitioners are not before me. However, from the perusal of the extracted portion of the judgments I regret my inability to agree with the petitioners. In my opinion, the argument of the learned counsel for respondent No.1 cannot be brushed aside. Consequently, the contention of the petitioners that the Magistrate has not considered the report or was somehow oblivious to it has to be rejected.

Resultantly, the petition is dismissed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

November 16, 2015

ashish

**(AJAY TEWARI)
JUDGE**