

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

CRR No. 3671 of 2014 (O&M)

Date of Decision: 03.09.2015.

Mst. Farzana

..... Petitioner

Versus

Asgar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Ashit Malik, Advocate
for respondent Nos. 1 to 4.

Mr. Rajiv Doon, AAG, Haryana
for respondent No. 5-State.

JASWANT SINGH, J. (Oral)

The complainant/prosecutrix is in revisional jurisdiction under Section 401 Cr.P.C., aggrieved by the order dated 13.10.2014, passed by the learned Additional Sessions Judge, Palwal, whereby the order dated 18.04.2014, passed by learned Sub Divisional Judicial Magistrate, Hathin, District Palwal, summoning respondent Nos. 1 to 4 as accused to face trial in a complaint case under Sections 452, 323, 376 (g) and 506 of the Indian Penal Code, was set aside and the matter remanded back for conducting of an inquiry contemplated under Section 202 Cr.P.C. before proceeding to take any action.

Learned Counsel for the petitioner has argued that the provisions of Section 202 Cr.P.C. regarding conduct of prior inquiry, first

of all relates to alleged accused persons residing outside the territorial jurisdiction, and secondly, have not to be mechanically applied in each and every case, more so in a situation when the Magistrate on the basis of a deposition before it proceeds to issue summons on the satisfaction of pre-summoning evidence recorded before it. He submits that in the present case, the learned trial Court had the benefit of the evidence of the prosecutrix/CW-1-Farzana, CW-2-Dr. Rekha Singh, who conducted the medical examination and prepared the MLR report and CW-3-Hukam Singh, Assistant Reader and, therefore, there was substantial compliance of the provisions of Section 202 Cr.P.C. It is further contended that except one Mustak, rest of the four accused are within the territorial jurisdiction of the Court and, therefore, there is no application of the provisions of Section 202 Cr.P.C.

On the other hand, learned Counsel for the accused submits that after the remand order, inquiry was got conducted by the learned Magistrate and a report has been submitted by the Investigating Agency/Police and, therefore, since the order stands complied, the present revision petition has become infructuous.

After hearing learned Counsel for the parties, this Court finds that the plea raised on behalf of the petitioner to be meritorious.

A bare reading of Section 202 Cr.P.C. reveals that a safeguard has been provided against vexatious prosecution of the accused inasmuch as a Magistrate is required to make an inquiry into allegations before issuing process against the accused residing outside the territorial jurisdiction of the

Court. The mode and manner of conducting that inquiry has not been specified, however, wide discretion has been conferred upon the Magistrate for adopting the mode towards compliance of that requirement of conducting inquiry. It is provided that the Magistrate may either enquire himself or direct an investigation to be made by a police officer or by any such other person as he thinks fit for the purpose of arriving at the sufficiency of the ground for proceeding further. Thus, the discretion of the Magistrate to himself take evidence of witnesses on oath towards compliance of the requirement of conducting such inquiry is not circumscribed by any other provisions of the statute. Still further, by reading of the proviso (a) to sub-section (1) of Section 202 Cr.P.C. and sub-section 2 of Section 202 Cr.P.C. makes it amply clear that where the offence complained of is triable exclusively by the Court of Session, no direction for investigation can be made and in such situation, the only option for the Magistrate is to himself call upon the complainant to produce all the witnesses and examine them on oath.

In the present case, it is not in dispute that the offence complained of i.e. Section 376 IPC is triable exclusively by the Court of Session. It is also not in dispute that except one, remaining three accused were residing within the territorial jurisdiction of the Magistrate. Therefore, keeping in view the scheme of the provisions of Section 202 Cr.P.C., the approach adopted by the learned Magistrate while passing the order dated 18.04.2014 in summoning the accused on the basis of depositions of CW-1 to CW-3 cannot be faulted with in any manner.

In fact, learned Revisional Court has totally misdirected itself in interpreting the provisions of Section 202 Cr.P.C. Still further, the Hon'ble Supreme Court in a recent judgment reported as Vijay Dhanuka Etc. Versus Najima Mamtaj Etc., 2014(3) RCR (Criminal) 793, in the concluding para No. 13 of the Judgment has held that the exercise by the Magistrate in examining the witnesses instead of first ordering an inquiry by way of investigation, is nothing but an enquiry envisaged under Section 202 Cr.P.C. Meaning thereby, there is substantial compliance of the requirement of conducting an inquiry.

In view of the above, the present revision is allowed and the order dated 13.10.2014 is set aside. The learned Magistrate would proceed from the stage of the initial order dated 18.04.2014. Since the matter has already been considerably delayed, it would be appreciated if the process in accordance with law is expedited.

Disposed of in the above terms.

September 03, 2015

Gagan/'dk kamra'

(JASWANT SINGH)
JUDGE