

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

Crl. Misc. M-12494 of 2015 (O&M)

Date of Decision: October 5 , 2018

Shashi Bhushan Garg and others

...Petitioners

Versus

Anju Garg

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amar Vivek, Advocate
for the petitioners.

Mr. Vivek K. Thakur, Advocate
for the respondent.

JAISHREE THAKUR, J.

1. The petitioners herein seeks to challenge the Criminal Complaint No.37 dated 06.08.2012 as well as impugned summoning order dated 07.06.2014 whereby the petitioners herein have been summoned under Sections 323, 341, 149 of Indian Penal Code (for short 'IPC').

2. The marriage of the respondent-complainant (for short 'the respondent') was solemnized on 09.05.1997 with Shashi Bhushan Garg, petitioner No. 1 as per Hindu rites and ceremonies. However, a matrimonial dispute arose between the parties, on account of bringing in adequate dowry, which led to multifarious litigation between them. A complaint under Sections 323, 354, 506, 34 IPC also filed before Chief Judicial

Magistrate, Mansa on an allegation that when the respondent had come to the court premises on 13.6.2012 for putting appearance in a pending case, she was abused, slapped, punched and hit with sticks by Shashi Bhushan Garg, her husband and his family members. It was stated that when the respondent was going back to her residence at around 1 o'clock in the afternoon and she was crossing the litigants hall, the accused- petitioners herein were preparing for boarding a black colour Safari car and when the respondent passed by the side of the car, at that time father-in-law Jaspal called out to the others, and she was surrounded by them, her mother-in-law and sister-in-law held her arms, whereas her husband and brother-in-law slapped and punched her, the father-in-law and mother-in-law had sticks with them, with which they hit her on the back. On hearing her hue and cry, her brother, who was walking behind along with another person named Darshan Kumar son of Chiranji Lal, rescued her. It was stated in the complaint that intimation of this occurrence in the court was informed to the police station and a written complaint was given on 19.6.2012 and since no action was taken, the complaint case was filed.

3. The Chief Judicial Magistrate, Mansa recorded the preliminary evidence of Darshan Kumar as CW 1, who was the witness to the incident complained of, as well as recorded the statement of the respondent-complainant as CW2. Based on the said evidence, the petitioners have been summoned to face trial under section 323, 354, 506, 34 of IPC.

4. Mr. Amar Vivek, learned counsel appearing on behalf of the petitioners herein contends that the petitioners have been falsely implicated

and the proceedings arising out of the complaint and the summoning order are nothing but a sheer abuse of the process of court. It is contended that there is no medical available on the record, nor is there any evidence that the respondent has lodged a complaint with the police on the date of the incident. It is contended that the complaint submitted before the Senior Superintendent of Police is dated 19.06.2012 whereas the incident complained of is stated to be on 13.06.2012. It is also argued that there is non-compliance of Section 202 of Code of Criminal Procedure (for short 'Cr.P.C.'), insofar as the trial court record would reflect that on 24.08.2013 the trial court had desired the production of report of SHO of Police station concerned, however the said report was not made available and without production of the same the summoning order has been issued .

5. Per contra, Mr Vivek Thakur, counsel appearing on behalf of the respondent contends that there is enough evidence on record to establish the fact that the respondent had been subjected to abuse, beatings and injury at the hands of the petitioners herein, who have been summoned in a complaint case. It is argued that on the day of the incident the police was informed and a complaint was duly registered with the police station on 19.6.2012. It is on account of the inaction of the police, the respondent was constrained to initiate the instant proceedings.

6. I have heard the counsel for the parties and with their assistance perused the pleadings of the case.

7. The petitioners herein are the husband and other in-laws of the respondent-complainant, who are residing in Chandigarh and at Noida,

which is in Uttar Pradesh. Shashi Bhushan Garg is the husband, whereas Jaspal Garg and Urmila Garg are the parents-in-law and Lalit Bhushan Garg and Neeru are the married brother and sister in law of Shashi Bhushan Garg. A perusal of the zimini orders, as reproduced in the petition, would reflect that by an order dated 24.08.2013, the then CJM passed the following orders;-

“Heard. Complainant has leveled the allegation in the present case against the accused who are resident of Chandigarh/Noida (U.P), therefore, keeping in view the provision under Section 202 Cr.P.C., let report be called for 07.10.2013.”

Thereafter, the case was kept pending awaiting the police report and when the police report was not received, the impugned order dated 07.06.2014 came to be passed summoning the present petitioners as accused.

8. The argument raised that there has been non-compliance of Section 202 Cr.P.C. is sustainable. Section 202 Cr.P.C. reads as under :-

“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 Session; or

(b) where the complaint has not been made by a Court, unless the respondent 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 witnesses 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 respondent 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.”

As per Section 202 Cr.P.C., an inquiry has to be held by the Magistrate when accused reside beyond its jurisdiction. It becomes incumbent upon the Magistrate to carry out an inquiry or investigation under Section 202 Cr.P.C. before issuing process. In this regard reliance is placed upon the judgment rendered in ***National Bank of Oman vs. Barakara Abdul Aziz and Anr., (2013) 2 SCC 488***, para 9 and 10 of which reads as under :-

9. “The duty of a Magistrate receiving a complaint is set out in Section 202 of the Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 of the Cr.P.C. is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient grounds for him to proceed further. The scope of enquiry under Section 202 of the Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint – (i) on the materials placed by the respondent before the Court (ii) for the limited purpose of finding out whether a *prima facie* case for issue of process has been made

our; and (iii) for deciding the question purely from the point of view of the respondent without at all advertent to any defence that the accused may have.

10. *Section 202 of the Cr.P.C. was amended by the Cr.P.C. (Amendment Act 2005) and the following words were inserted:*

“and shall, in a case where the accused is residing at a place beyond the area in which he exercises jurisdiction” The notes on clauses for the above-mentioned amendment read as follow:

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that the 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.” The amendment has come into force w.e.f. 23.6.2006 vide notification No.S.O.923(E) dt. 21.6.2006.”

9. Similarly in **Abhijit Pawar versus Hemant Madhukar Nimbalkar 2017 (1) RCR (Criminal) 405**, the Supreme Court has held that amended provisions of Section 202 Cr.P.C cast an obligation on the Magistrate to apply his mind, carefully and satisfy himself that the allegations in the complaint when considered along with the statements recorded, the enquiry conducted therefrom, would prima facie constitute the offence for which the complaint is filed, while further holding the requirement of conducting an enquiry or directing investigation before issuing process is, therefore, not in an empty formality.

10. It is evident that the said procedure had not been followed and,

therefore, there is non-compliance of Section 202 Cr.P.C. rendering the summoning order as a nullity. The question arises whether the matter should be remanded back to the trial Court to pass fresh orders in compliance with Section 202 Cr.P.C. or to proceed to exercise inherent powers under Section 482 Cr.P.C. and quash the complaint being an abuse of the process of law as has been claimed in the instant petition.

11. Since the respondent herein has raised a specific plea that she was subjected to injury, abuse, humiliation etc. constituting offences under Sections 323, 354, 506, 34 of the Indian Penal Code within the court complex at Mansa, this court deems it appropriate to set aside the impugned summoning order and remand the matter back to the Chief Judicial Magistrate, Mansa to pass fresh orders in compliance of Section 202 Cr.P.C.

12. Ordered accordingly.

13. The respondent-complainant is directed to appear before the Chief Judicial Magistrate, Mansa on 30.10.2018.

14. The petition stands partly allowed accordingly.

October 5, 2018

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No