

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

**CRM No.M-24398 of 2017
Decided on: 05.02.2018**

Ramesh Vinayak

....Petitioner

Versus

Gurpreet Singh Ahluwalia and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Sumeet Goel, Advocate
for the petitioner.

Mr. A.S. Ahluwalia, Advocate
for respondent No.1.

Mr. Rajiv Sharma, APP, U.T., Chandigarh
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of criminal complaint No.206400 of 2015 filed under Sections 499 and 500 of Indian Penal Code (in short 'IPC') and the summoning order dated 23.08.2016 (Annexure P4) as well as the order dated 18.10.2016 (Annexure P7) vide which the criminal complaint was restored by the trial Court on payment of costs of Rs.2,000/-.

Brief facts of the case are that the respondent/complainant – Gurpreet Singh Ahluwalia filed a criminal complaint under Sections 499 and 500 IPC against the petitioner who is arrayed as accused No.6 along with other accused Nos.1 to 5 in the complaint. The case of the complainant is that, on 10.08.2015, a news item has been published in the local newspaper by the Editor of Hindustan Times and Dainik Bhaskar that when the Punjab Police came to know about arrest of the

complainant by Chandigarh Police on the allegation that the complainant and his brother has tried to kidnap and threatened one Gursharan Singh, the Punjab Police took the complainant to Batala on production warrant as he was wanted in a case at Punjab. It is also published in the newspaper that a case of cheating was registered against the complainant at Batala. The complainant further stated that the news item published in Dainik Bhaskar newspaper was false and has lowered the reputation of the complainant and it was done on account of business rivalry as a news channel is run by the father of the complainant. It is further stated that in fact no case has been registered against the complainant in Batala nor he was taken by the Punjab Police as alleged in the newspaper. The complainant further stated that he is an Advocate and when his colleagues (as named in the complaint) enquired about his arrest, it had lowered the reputation of the complainant at his workplace and he has also faced lot of social embarrassment. It was also stated that a false news regarding the arrest of the complainant was also aired on a television channel i.e. Living India by its Anchor Roopak Sharma.

The complainant in the preliminary evidence examined himself as CW1 and produced on record the documents Exs.C1 to C4 including the news item published in Hindustan Times and Dainik Bhaskar as well as the C.D. which was aired on the news channel. CW2 – Karamjeet Singh, stated that he has read the aforesaid news item which relate to his colleague/complainant and when he enquired the matter from the near and dear ones, the image and respect of the complainant was lowered in his eyes. Similar statement was made by

CW3 – Gurmatpal Singh and CW4 – Mohit Kaushal.

Thereafter, the trial Court vide its order dated 23.08.2016 summoned the accused persons including the petitioner to face the trial under Section 500 IPC.

Later on, vide impugned order dated 17.10.2016 (Annexure P5), the trial Court dismissed the complaint on account of non-appearance of the complainant. The complainant, thereafter, filed an application for restoration of the complaint pleading that inadvertently, he has noted a wrong date and on that account, the complaint was dismissed for non-prosecution. The trial Court vide impugned order dated 18.10.2016 (Annexure P7) restored the complaint in view of the grounds mentioned therein, subject to deposit of costs of Rs.2,000/- with District Legal Services Authority and fixed a date for summoning the case file from the record room. Thereafter, summons were issued to the petitioner as well as other co-accused and the petitioner has filed the present petition praying for quashing of the complaint, summoning order as well as the order vide which the complaint was later on, restored.

Reply on behalf of the respondent/complainant has been filed in which the respondent has reiterated the version given in the complaint. It was also stated that the news item published was a false news and it has lowered the image and reputation of the complainant in the eyes of his colleagues and complaint has been restored in accordance with law.

Counsel for the petitioner has submitted that once the criminal complaint was dismissed in default on account of non-

appearance on 17.10.2016, it amounts to discharge of the respondents and the trial Court was not competent to restore the same as there is no provision in the Code of Criminal Procedure for restoration of the complaint by a Magistrate.

Counsel for the petitioner has relied upon the judgment passed by this Court ***“Daya Kishan and another vs Banarsi Dass”***, **2010(2) RCR (Criminal) 451**, wherein this Court has held that a Magistrate cannot recall his order once the complaint has been dismissed for non-prosecution as there is no such procedure provided in the Code of Criminal Procedure. It is further submitted on behalf of the petitioner that the trial Court has not obtained a report under Section 202 Cr.P.C. as the petitioner and other accused are residing beyond the area in which the Magistrate/trial Court exercise its jurisdiction. It is further submitted that as per the provisions of Section 202 Cr.P.C., the trial Court should have postpone the issue of process and either it should have enquired into the case before itself or direct an investigation to be made by a Police Officer in this regard. Counsel for the petitioner has further submitted that the petitioner is an Editor of Hindustan Times having its office at Industrial Area, Mohali, Punjab and therefore, the same does not fall in the jurisdiction of the trial Court at Chandigarh. Counsel for the petitioner has further argued that even the Living India news is having its office at village Tangri, Punjab as is clear from the memo of parties of the impugned complaint (Annexure P1) itself.

Counsel for the petitioner has also relied upon the judgment passed by the Hon'ble Supreme Court of India ***“Abhijit***

Pawar vs Hemant Madhukar Nimbalkar and another”, 2017(1) RCR (Criminal) 405, where the Hon'ble Supreme has held as under:-

*“22. Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 of the Cr.P.C. was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction'. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment. The essence and purpose of this amendment has been captured by this Court in **Vijay Dhanuka v. Najima Mamtaj**, 2014(3) R.C.R.(Criminal) 793 : 2014(4) Recent Apex Judgments (R.A.J.) 459 : (2014) 14 SCC 638 in the following words:*

"11. 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.

12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. 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."

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."

23. *For this reason, the amended provision casts 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 or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment **Mehmood Ul Rehman v. Khazir Mohammad Tunda, 2015(2) R.C.R.(Criminal) 517 : 2015(2) Recent Apex Judgments (R.A.J.) 505 : (2016) 1 SCC (Cri) 124** in the following words:*

*"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in **Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial***

Magistrate, 1997(4) R.C.R.(Criminal) 761 : (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.

22. The steps taken by the Magistrate under Section 190(1)(a) Cr.P.C. followed by Section 204 Cr.P.C. should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, *prima facie*, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by

issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

24. *The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of 'enquiry' is needed under this provision has also been explained in Vijay Dhanuka 8 case, which is reproduced hereunder:*

"14. 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. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;"

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the 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."

25. When we peruse the summoning order, we find that it does not reflected any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of complainant and after perusing the copies of documents filed on record, i.e., FIR translation of complaint, affidavit of advocate who had translated the FIR into English etc. the operative portion reads as under:

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 50 read with 34 of the Indian Penal Code. Hence issue process against the accused for the above offences returnable on 23.12.2009. case be registered as Summary Case."

Similar view has been taken by the Hon'ble Supreme Court of India in the judgment ***“National Bank of Oman vs Barakara Abdul Aziz and another”*** 2013(2) SCC 488.

It is further submitted on behalf of the petitioner that no offence under Section 500 IPC is made out against the petitioner in view of the exceptions to Section 499 IPC.

In reply, counsel for the respondents has submitted that the complaint was dismissed for non-prosecution on 17.10.2016, before the petitioner/accused persons had put in appearance before the trial Court

and since, there was no adjudication on merits of the case, the trial Court has restored the same. It is further submitted that accused Nos.2 and 5, the Editor and Reporter of Dainik Bhaskar are having their office at Sector 25, U.T., Chandigarh and they are amenable to the jurisdiction of the trial Court. Counsel for the petitioner has further submitted that the trial Court has summoned the petitioners on the basis of appreciation of the oral and documentary evidence led by the complainant.

After hearing counsel for the parties, I find merit in the present petition. Since, the petitioner is having its registered office at Mohali, Punjab which does not fall within the jurisdiction of the trial Court i.e. Judicial Magistrate Ist Class, U.T., Chandigarh, it was incumbent upon the trial Court to follow the procedure prescribed under Section 202(1) Cr.P.C. in view of the judgment in ***Abhijit Pawar's case (supra)*** as well as ***National Bank of Oman's case (supra)***. The trial Court has neither conducted an enquiry itself nor has obtained a report from the police under Section 202 Cr.P.C. and has passed the summoning order without following the procedure laid down under Section 202 Cr.P.C.

It has been held by the Hon'ble Supreme Court of India in ***“Punjab State Warehousing Corporation, Faridkot vs Shree Durga Ji Traders and others”*** 2011(14) SCC 615, that if a criminal complaint has been dismissed for non-prosecution, the High Court in exercise of its inherent power under Section 482 Cr.P.C., in order to prevent miscarriage of justice or to prevent abuse of process of the Court or to otherwise secure the ends of justice, can set-aside such order.

Therefore, even if it is held that the trial Court has restored the complaint vide impugned order dated 18.10.2016, without there being any provision under the Code of Criminal Procedure, even then, treating it to be an illegal order, this Court while entertaining the present petition under Section 482 Cr.P.C., though filed on behalf of the accused, can rectify the said mistake and restore the complaint. In view of the fact that the non-appearance of the complainant was a *bona fide* mistake as he has noted a wrong date and moved the application for restoration promptly by explaining the reasons for non-appearance, the complaint is restored by exercising inherent power provided under Section 482 Cr.P.C.

In view of what has been discussed hereinbefore, the present petition is allowed, the impugned order dated 23.08.2016 passed by the trial Court (Annexure P4) summoning the petitioner as well as the order dated 18.10.2016 (Annexure P7) restoring the complaint are set-aside and the matter is remitted back to the trial Court to decide the complaint afresh after following the procedure laid down under Section 202(1) Cr.P.C. It is made clear that though the order dated 18.10.2016 is set-aside, however, in exercise of the power under Section 482 Cr.P.C., it is ordered that the complaint is restored to its original number and will be decided afresh, in accordance with law.

05.02.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No