

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
285

DATE OF DECISION: MARCH 26, 2018

(1) CRM-M NO.43077 OF 2017

Bimla Kumari and others

.....Petitioners

VERSUS

Gursharan Kaur

....Respondent

(2) CRM-M NO.47380 OF 2017

Tilak Raj

.....Petitioner

VERSUS

Gursharan Kaur

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ankur Bansal, Advocate,
for the petitioners (in both the cases).

Mr. Ajay Pal Singh Rehal, Advocate,
for the respondent. (in both the cases).

AUGUSTINE GEORGE MASIH, J.

Criminal Misc. Nos.43077 and 47380 of 2017 have been filed by the petitioners for quashing of complaint No.48 dated 18.03.2015 (Annexure P-1) titled as 'Gursharan Kaur Vs. Bimla Kumari and others' for offences under Sections 306, 34, 120-B IPC, pending in the Court of Judicial Magistrate Ist Class, Hoshiarpur and all consequential proceedings arising therefrom including the summoning order dated 12.07.2017 passed by Judicial Magistrate Ist Class, Hoshiarpur (Annexure P-2), whereby the petitioners have been summoned to face trial under Sections 306/34/120-B

IPC. Both these petitions are being disposed of by this common order.

It is the contention of learned counsel for the petitioners that the complaint, which has been preferred by the respondent is a counter blast to the proceedings, which are going on in FIR No.85, dated 26.05.2012, registered under Sections 406, 498A IPC at Police Station Shahkot, District Jalandhar, against the respondent and her son, Vikrant (now deceased), who was husband of petitioner No.1, Bimla Kumari (in Criminal Misc. No.43077 of 2017) and her son Bikramjit Singh as also proceedings initiated against now deceased husband of petitioner No.1, Bimla Kumari, where interim maintenance to the tune of ₹1500/- per month has been ordered on 11.04.2013. He contends that the present complaint, which has been filed against the petitioners, is totally false and initiated only to harass and for putting pressure on them so that petitioner No.1 may withdraw the FIR and the proceedings initiated for maintenance. What has happened is that unfortunate husband of petitioner No.1, Vikrant, died on 09.06.2013 in his parental home on account of the fact that he had consumed some poisonous substance, which was not disclosed to the petitioners. The cause of death although has been stated to be consumption of a poisonous substance but that could not be attributed to the petitioners, especially when petitioner No.1, with whom Vikrant deceased was married, had stayed in her matrimonial home for only few months and had been thrown out of the said house, because of which FIR was registered against them. Even a female child, who was born out of the wedlock, took birth in her parental home. There was no connection between the parties except for the matrimonial discord and that too because of the respondent and other family members as petitioner No.1 was harassed, tortured and humiliated for dowry. Further,

there is unexplained delay of about 1 year and 9 months in filing the present complaint as the date of death of husband of petitioner No.1, Vikrant and son of respondent-complainant is 09.06.2013 whereas the complaint was filed on 18.03.2015.

Challenge has also been posed by the counsel to the summoning order on the plea that the provisions of Section 202 of the Code of Criminal Procedure (for short, “the Code”) have not been applied while issuing summons to the petitioners. Apart from that the fact that there is a DDR No.32A dated 10.06.2013, which has been recorded at the behest of the respondent on the death of Vikrant, her son, to the effect that she did not want to pursue any criminal litigation against any one, has been totally ignored. Reliance has been placed by him on the following judgments in support of his contention with reference to non-compliance of the provisions of Section 202 of the Code prior to issuing summons to the petitioners as they reside beyond the jurisdiction of the Magistrate:-

i. Abhijit Pawar Vs. Hemant Madhukar Nimbalkar & Anr., 2017 (2) SCC (Cri.) 192

ii. Aroon Purie Vs. Jayakumar Hiremath, 2017 (7) SCC 767

iii. Savera Sidhu Vs. Harleen Sidhu and another, 2011 (2) R.C.R. (Criminal) 442

iv. Sonti Rama Krishna Vs. Sonti Shanti Sree, 2009 (1) SCC 554

v. Mehmood UI Rehman Vs. Khazir Mohammad Tunda and others, 2015 (12) SCC 420

On the basis of these submissions, counsel has prayed for quashing of the complaint as also the summoning order.

On the other hand, counsel for the respondent has asserted that the offences, for which the petitioners have been summoned, are clearly made out from the contents of the complaint. The delay has been duly explained by the complainant, not only in the complaint but also in her own statement, which is followed by official documentary evidence. It is asserted that after the death of Vikrant, post mortem report was received from the hospital on 11.06.2013, which says that the cause of death would be revealed after receiving the report of the chemical examiner. The respondent had been approaching the police station in order to get report but the same was not received. Ultimately in the month of November 2014, she applied for the report of the Chemical Examiner under the Right to Information Act and on receipt of the said report vide letter dated 11.12.2014, which disclosed that the cause of death of her son was presence of Chlorocompound group of insecticides in the various parts of the body like stomach, small and large intestine, lungs, heart, liver, spleen, kidney and blood. That police authorities were approached for taking action against the petitioners but when no response was received, complaint dated 18.03.2015 has been filed. Referring to the contention of counsel for the petitioners with regard to factum of earlier litigation between the parties, it has been stated that all the facts are clearly disclosed in the complaint and it has been mentioned in detail in the summoning order as well as in the evidence of the complainant before the court. The documentary evidence has been led and the witnesses have been examined in support of the allegations. DDR entry No.10.06.2013 has been produced on record and reasons have been mentioned as to how the same has come into existence. By explaining that few papers were got signed from her by the police in the spur of the moment

at the time of death of her son, when she had lost her calm and composure. So far as assertion of counsel for the petitioners regarding non-compliance of the provisions of Section 202 of the Code is concerned, counsel has also relied upon the judgment of Hon'ble Supreme Court in Abhijit Pawar's case (supra) as also the basic judgment on which reliance has been placed by the Supreme Court in its own earlier judgment in Vijay Dhanuka etc. Vs. Najima Mamtaj etc., 2014 (14) SCC 638, especially Paras 12 and 13 thereof, where the Hon'ble Supreme Court has dealt with the mandate of enquiry under Section 202 of the Code. He, on this basis, contends that the mandate of the provisions as contained under Section 202 of the Code have been fully complied with and, therefore, the summoning order is in accordance with law.

I have given my thoughtful consideration to the submissions made by counsel for the parties and with their assistance have gone through the records of the case as also the judgments relied upon by them.

A perusal of the complaint would show that the offence under Section 306 read with Section 34 and 120-B IPC against the petitioners is made out. Apart from the statement of the complainant and that of other witnesses who have appeared and proved the documents placed on record with further support of the version of the complainant by the official witnesses who appeared, go a long way to show that the offences are made out against the petitioners for which they have been summoned.

As regards the assertion of counsel for the petitioners regarding delay in filing the complaint, the same, in the considered opinion of this Court, has been duly explained by the complainant in the complaint as well as in her statement before the Magistrate, which is duly supported by

documentary evidence placed on record by her as well as the official witnesses. The said plea, thus, cannot be accepted.

The plea of counsel for the petitioners about non-compliance of the provisions of Section 202 (1) of the Code also cannot be accepted as the basic judgment on which reliance has been placed by the counsel for the petitioners i.e. Abhijit Pawar's case (supra) is not applicable to the facts of the present case. In the relevant paras 22 to 24, it has been held as follows:-

“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 Vs. Najima Mamtaj 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 Vs. 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 an 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) CrPC followed by Section 204 CrPC 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 CrPC 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 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, 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 CrPC 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 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.”

A perusal of the above would show that the requirement of the statute is that the Magistrate can either enquire himself or get an enquiry conducted prior to issuing notice to the accused residing at a place beyond the area in which the Magistrate exercises his jurisdiction. This obviously

has to be prior to reaching a satisfaction that a prima-facie case against the accused for the offences, for which he was being sought to be summoned is made out. Therefore, an obligation has been cast on the Magistrate to apply his mind carefully and on satisfying himself that the allegations in the complaint, when considered alongwith the statements recorded, constitute a prima-facie offence(s) for which the complaint is filed, can the accused be summoned and not otherwise.

A perusal of the summoning order would fulfill the mandate of the statute as interpreted by Hon’ble the Supreme Court in the above referred two judgments. The other judgments, on which reliance has been placed by counsel for the petitioners, are based on the facts of those particular cases where the Court has come to a conclusion that the mandate of the statute has not been complied with, which is not the position in the present case.

In view of the above discussion, finding no merit in the present petitions, the same stands dismissed.

March 26, 2018
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No