

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.728 of 2014

Sudhanshu Kumar, son of Shri Rajaram, aged about 47 years, R/o "Triveni", Shanti Nagar, Via-S.B.I. Personal Banking Branch Nehru Nagar, P.S. Civil Line, Civil and Revenue District Bilaspur (CG)

--- Petitioner

Versus

Vijay Kumar Jaiswal, son of Shri Shankar Lal Jaiswal, aged about 44 years, proprietor Vijay Traders, R/o. MIG-II/26, C.G. Housing Board, Industrial Area-Bhilai, Police Station Jamul, Civil and Revenue District Durg (CG)

--- Respondent

For Petitioner	:	Mr.Sunil Pillai, Advocate
For Respondent	:	Mr.Jitendra Gupta and Mr.C.P.Soni, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/04/2019

1. The complainant/respondent herein, resident of Jamul, Durg, filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as 'the Act of 1881') and Section 420 of the IPC against the petitioner herein, resident of Bilaspur, in which the Judicial Magistrate First Class, Durg on 2.5.2012 held that there is sufficient material against the petitioner for proceeding under Section 138 of the Act of 1881 and directed for issuance of process against him, which he has challenged in this petition under Section 482 of the CrPC stating inter-alia that since he was resident of Bilaspur, which is outside the jurisdiction of the Judicial Magistrate First Class, Durg, therefore, procedure prescribed under Section 202 of the CrPC ought to have been followed.
2. Mr.Sunil Pillai, learned counsel for the petitioner, would submit that learned JMFC has committed illegality in overlooking the provisions

contained in Section 202 of the CrPC, therefore, the impugned order deserves to be set aside.

3. Mr.C.P.Soni, learned counsel appearing on behalf Mr.Jitendra Gupta, learned counsel for the respondent, would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.
5. It is correct to say that the complainant is resident of Jamul, Durg. He has filed a complaint under Section 200 of the CrPC for commission of offence under Section 138 of the Act of 1881 and Section 420 of the IPC in the Court of Judicial Magistrate First Class, Durg against the petitioner, who is resident of Bilaspur.
6. At this stage, it would be appropriate to notice Section 202 of the CrPC which states as under:-

“202. 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, 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 complainant 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 complainant 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.”

7. Provisions contained in Section 202 of the CrPC came to be considered by Their Lordships of the Supreme Court in the matter of **National Bank of Oman v. Barakara Abdl Aziz and another**¹ in which Their Lordships took notice of amendment incorporated in the CrPC in 2005 w.e.f. 23.6.2006 and held as under:-

“10. Section 202 of the CrPC was amended by the Code of Criminal Procedure (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) dated 21.6.2006.

11. We are of the view that the High Court has correctly held that the above-mentioned amendment was not noticed by the CJM Ahmednagar. The CJM had failed to carry out any enquiry or order investigation as contemplated under the amended Section 202 of the CrPC. Since it is an admitted fact that the accused is residing outside the jurisdiction of the CJM Ahmednagar, we find no error in the view taken by the High Court.

1 (2013) 2 SCC 488

12. All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 of the CrPC. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached by the High Court that the bare allegations of cheating do not make out a case against the accused for issuance of process under Section 418 or 420 IPC. The CJM will pass fresh orders after complying with the procedure laid down in Section 202 CrPC, within two months from the date of receipt of this order.”

8. Applying the principle of law laid down by the Supreme Court in **National Bank of Oman** (supra) to the facts of the present case, it appears that the petitioner is residing at Bilaspur, therefore, learned JMFC ought to have followed the procedure as contemplated under Section 202 of the CrPC as admittedly the accused is residing outside the jurisdiction of the JMFC, Durg.
9. For the foregoing reasons, the impugned order is set aside. The matter is remitted to learned JMFC, Durg to pass the order afresh complying with the procedure prescribed in Section 202 of the CrPC within three months from the date of receipt of a copy of this order.
10. The CrMP is allowed to the extent indicated hereinabove. A copy of this order be sent to the concerned JMFC for proceeding in accordance with law by fax/E-mail.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-