

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

CRM No.M-19918 of 2017 (O&M)

Date of Decision: May 08, 2019

Gurmail Singh and another

...Petitioners

VERSUS

Gurmeet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Narinder Kumar Vadehra, Advocate
for the petitioners.

Mr.P.S.Jammu, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of criminal complaint bearing COMI No.13 of 2016 dated 10.03.2016 titled as 'Gurmeet Singh vs. Gurmail Singh and others', summoning order dated 02.02.2017 vide which the petitioners along with other accused have been summoned under Sections 323, 506 read with Section 34 IPC, as the summoning order has been passed in violation of mandatory provisions of law and without considering the fact that there is nothing on the record which even remotely shows that any injury has been suffered by the complainant and without following mandatory provisions of Section 202 Cr.P.C. and also without considering the fact that complaint is counter-blast to the proceedings initiated against the complainant-

respondent etc.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

At the time of arguments, learned counsel for the petitioners mainly argued on one legal point that before summoning the accused by the trial Court, provisions of Section 202 Cr.P.C. have not been complied with. The complaint has been filed at Dabwali, whereas the accused belong to Ludhiana i.e. out of jurisdiction of the trial Court, therefore, learned counsel for the petitioners argued that complaint as well as summoning order are liable to be quashed as no enquiry was got conducted under Section 202 Cr.P.C. He further argued that provisions of Section 202 Cr.P.C. are mandatory in nature.

On the other hand, learned counsel for the respondent argued that recording of preliminary evidence by the learned trial court amounts to enquiry and summoning order or complaint, is not liable to be quashed.

I have heard learned counsel for the parties and have gone through the record.

I find that the Hon'ble Supreme Court in **Aroon Purie vs. Jayakumar Hiremath, 2017 (7) SCC 767**, has held as under:-

“3. The above apart, from the materials on record it appears that the accused appellants in the present appeals have and maintain residence beyond the local jurisdiction of the learned trial Court. Under the provisions of Section 202(1) Cr.P.C., it was, therefore, mandatory for the learned Magistrate to hold an enquiry either by himself or direct an investigation by the Police prior to the issuance of process. Admittedly, the same had not been done. If the aforesaid mandatory provisions of Section 202(1) Cr.P.C. had not been followed, the learned trial Court would not have the jurisdiction to issue process/summons as has been done.”

In *National Bank of Oman vs. Barakara Abdul Aziz and another, 2013(2) SCC (Cri) 731*, in which CJM had not carried out any enquiry or ordered investigation as contemplated under Section 202 Cr.P.C., when the accused was residing outside the territorial jurisdiction of CJM, the Hon'ble Supreme Court quashed the impugned order.

Learned counsel for the respondent cited judgment passed by the Hon'ble Supreme Court in *Vijay Dhanuka etc. vs. Najima Mamtaj etc., 2014(3) RCR (Crl.) 793*, wherein it is held as under:-

“17. 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. xxx xxx xxx (g) ”inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court; xxx xxx xxx”.

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

18. 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. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process. In view of what we have observed above, we do not find any error in the order impugned. In the result, we do not find any merit in the appeals and the same are dismissed accordingly.

I have gone through the above-cited judgment by learned counsel for the respondent and the same fully applies to the facts of the

present case. Learned Magistrate has recorded statement of the complainant as PW-1 and has also examined Sukhpreet Kaur, wife of the complainant as PW-2 and Gurjant Singh as PW-3 in the oral evidence. Therefore, requirement of enquiry under Section 202 Cr.P.C. has been fully complied with as the Magistrate himself enquired into the matter. So, in no way, it can be held that provisions of Section 202 Cr.P.C. have not been complied with. Further, I have gone through the judgment passed by Hon'ble Apex Court in ***K.S.Joseph vs. Philips Carbon Black Ltd. and another, 2016(2) RCR (Criminal) 788***, wherein, it is held as under:-

“7. The amendment has a purpose in requiring the concerned Magistrate to postpone the issue of process against the accused if he is residing at a place beyond the area of his jurisdiction and to hold an enquiry or direct an investigation by a police officer or any other person for the purpose of deciding whether or not there is sufficient ground for proceeding. It is to avoid unnecessary harassment to the proposed accused. In such an enquiry, the Magistrate may take evidence of witness on oath but in view of Section 145 of the Act, complainant's evidence on affidavit will also be permissible for the purpose of such enquiry.”

As the Magistrate can hold the enquiry himself and he has recorded the statements of the complainant and other witnesses, therefore, in no way, it can be held that provisions of Section 202 Cr.P.C. have not been complied with.

Next, I find that the finding of fact, whether it is a counter-blast or no such occurrence took place, is to be given by the trial Court when the evidence will be produced before it. In the quashing petition, these findings of fact cannot be given by this Court.

In view of the above discussion, I do not find any ground to quash the complaint as well as summoning order.

Therefore, finding no merit in the present petition, the same is dismissed.

May 08, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No