



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 25.03.2021

Delivered On : 20.04.2021

CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)Nos.288 to 290 of 2020
and Crl.M.P.(MD)Nos.2445, 2447 and 2450 of 2020

Crl.R.C.(MD)No.288 of 2020 :

1.Rithesh Bawri
2.Binothkumar Bawri
3.Vinay Bawri
4.Saroj Bawri
5.Dimple Bawri
6.Nisha Bawri Singh

.. Petitioners

Vs.

1.M/s.Dalmia Bharath (Ltd)
Having its Registered office,
at Dalmiapuram, Tiruchi,
Represented by its authorized
Agent and Deputy General Manager,
V.Balasubramanian

2.V.Balasubramanian

.. Respondents

Crl.R.C.(MD)No.289 of 2020 :

Ramesh Trimbakrao Shiledhar

.. Petitioner

Vs.

M/s.Dalmia Bharath (Ltd)
Having its Registered office,
at Dalmiapuram, Tiruchi,
Represented by its authorized
Agent and Deputy General Manager,
V.Balasubramanian

.. Respondent

Crl.R.C.(MD)No.290 of 2020 :

1.Rithesh Bawri
2.Binothkumar Bawri
3.Vinay Bawri
4.Saroj Bawri



5.Dimple Bawri
6.Nisha Bawri Singh
7.Pradip Bansal

.. Petitioners

Vs.

M/s.Dalmia Bharath (Ltd)
Having its Registered office,
at Dalmiapuram, Tiruchi,
Represented by its authorized
Agent and Deputy General Manager,
V.Balasubramanian

.. Respondent

Common Prayer in all Crl.R.Cs. : These Criminal Revision Cases filed under Sections 397 r/w. 401 of Cr.P.C., to revise the order of learned Judicial Magistrate, Lalgudi (FAC), made in C.M.P.Nos.925, 1665 and 1666 of 2019 in C.C.Nos.22 and 23 of 2017 dated 27.12.2019.

For Petitioners	: Mr.N.R.Elango, Senior Counsel
(in all Crl.R.Cs.)	For M/s.Fox Mandel and Associates
For Respondents 1 and 2	: Mr.A.Ramesh, Senior Counsel
(in all Crl.R.Cs.)	For Mr.S.Anwar Sameem

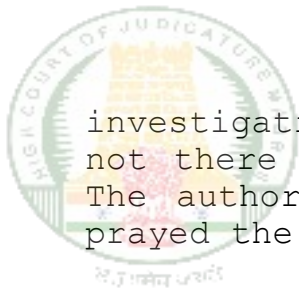
ORDER

The petitioners filed petitions under Section 202 of Cr.P.C., in C.M.P.Nos.925, 1665 and 1666 of 2019 on the file of the learned Judicial Magistrate, Lalgudi. The petitions were dismissed by the learned Judicial Magistrate on 27.12.2019. Against that order, the petitioner have preferred these Criminal Revision Cases.

2.On the side of the petitioners, it is stated that two private complaints were filed by the complainant/first respondent under Section 200 of Cr.P.C., for an alleged offence under Sections 34, 120(b), 499, 500 and 503 of IPC and the cases were taken on file as C.C.No.22 and 23 of 2017 respectively. The petitioners preferred a petition in Crl.O.P.No.11759 of 2017 before this Court and the same was dismissed. Against the dismissal order, the petitioners filed a Special Leave Petition in SLP.No.2432 of 2019.

3.Though Special Leave Petition was dismissed, the Hon'ble Supreme Court has given liberty to the petitioner by observing as follows: "all the rights and contentions of the parties are kept open". As the petitioners are entitle to contest their case, they filed these petitions under Section 202 of Cr.P.C.

4.All the petitioners are residing outside the jurisdiction of Lalgudi. Only their office is within the jurisdiction of Lalgudi. Under Section 202 of Cr.P.C., the accused must be residing within the jurisdiction of particular learned Judicial Magistrate. Without considering this aspect, the learned Judicial Magistrate has dismissed the petition. The learned Judicial Magistrate has directed



investigation to be made by the police officer to decide whether or not there is sufficient ground for proceeding against the accused. The author of the article was not impleaded in the complaint and prayed the impugned order to be set aside.

5.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Birla Buildings Limited v. Birla Corporation Limited** reported in **(2019) 16 Supreme Court Cases 610**, wherein it is stated as follows:

"14.On behalf of the appellant, Mr.C.A.Sundaram, learned Senior Counsel submitted that the appellant discharged the initial burden placed upon it by adducing pre-summoning evidence by examining two witnesses and based upon the averments in the complaint and the statement of witnesses Shri Samir Ganguly and P.B.Dinesh, the Magistrate satisfied himself that there are sufficient grounds for proceeding against the accused and the High Court rightly held that there was no irregularity in the procedure followed by the Magistrate in issuing process against the respondents. The learned Senior Counsel submitted that respondents 1 to 9 have produced the documents before the Company Law Board and the respondents 12 to 16 have filed Document 1 Internal Audit Report which are highly confidential documents and having not disclosed the source for the accusation/possession of the documents, *prima facie* case in dishonest removal of the documents have been made out and the Magistrate rightly found that there are sufficient grounds for proceeding against the respondent-accused and took the cognizance of the offences under Sections 380, 411 and 120-B of IPC.

51.Based on the allegations in the complaint and the statements of Shri Samir Ganguly and P.B.Dinesh, the Metropolitan Magistrate took cognizance and directed issuance of summons to respondents 1 to 16. As pointed out earlier, as per Notes on Clause 19, the object behind the amendment to Section 202 Cr.P.C., is to ensure that innocent persons who are residing as far off places are not harassed by unscrupulous persons. The amendment, therefore, makes it obligatory upon the Magistrate that before summoning the accused residing beyond the jurisdiction, the Magistrate has to enquire the case either himself or direct investigation to be made by the police officer and is required to apply his mind and record his satisfaction with reasons"



6. On the side of the petitioner, it is stated that the learned Judicial Magistrate must have taken up the case for enquiry under Section 202 of Cr.P.C., and must have examined the witnesses. Considering the evidence and records and if he finds sufficient grounds for proceeding against the accused, only then he can take cognizance of the case. The order of learned Judicial Magistrate reveals that he has not applied his mind before taking cognizance of the offence. There must be sufficient indication that there was application of mind as to the facts constituting the commission of an offence.

7. On the side of the petitioner, it is stated that when a private complaint has been filed, the Court has to examine complainant and to examine witnesses present and to determine whether a case is made out for issuing process.

8. The learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in the case of **Jayant, etc., v. State of Madhya Pradesh** reported in **2020 SCC Online SC 989**, wherein it is stated as follows:

"The underlying object of the inquiry under Section 202 is to ascertain whether there is prima facie case against the accused. It thus allows a Magistrate to form an opinion whether the process should or should not be issued. The scope of inquiry under Section 202 is, no doubt, extremely limited. At that stage, what a Magistrate is called upon to see is whether there is sufficient ground for proceeding with the matter and not whether there is sufficient ground for conviction of the accused."

9. On the side of the respondents, it is stated that the learned Magistrate has recorded the evidence of the defacto complainant by way of sworn statement. Witnesses were examined. The enquiry contemplated under Section 202 of Cr.P.C., was considered by the learned Magistrate. On 02.02.2017, 17.02.2017, 24.02.2017, 04.03.2017, 17.03.2017, 21.04.2017, 02.05.2017, 19.05.2017 and 31.05.2017, the respondents were present before the trial Court. On 04.03.2017, the sworn statement of the complainant was recorded. On 19.05.2017, the witness who were present were examined. Only on 07.06.2017, the cases were taken on file as C.C.Nos.22 and 23 of 2017 under Section 120(b), 300 r/w. 34 of IPC and summon was ordered to be sent to the petitioners.

10. Under Section 200 of Cr.P.C., an enquiry is necessary in a case where the accused is residing beyond the territorial jurisdiction of particular learned Judicial Magistrate. Here the learned Judicial Magistrate has conducted an enquiry and has examined the witnesses and only then the case was taken on file.



11.The learned counsel for the respondents would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Vijay Dhanuka and others v. Najima Mamtaj and others** reported in (2014) 14 Supreme Court Cases 638, wherein it is stated as follows:

"It is evident from the definition of 'inquiry' under Section 2(g) of Cr.P.C., that 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. In the inquiry envisaged under Section 202, the witnesses are examined whereas under Section 200, 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.

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."

12.On the side of the respondents, it is stated that the mode of enquiry is not specifically stated in Section 202 of Cr.P.C. The complainant and the official witnesses have to be examined. The enquiry is defined as " enquiry other than a trial". Recording of the sworn statement and examination of witnesses reveals that the learned Judicial Magistrate has conducted enquiry under Section 202 of Cr.P.C.

13.It is stated that the petitioners filed a petition before this Court to quash the proceedings in Crl.O.P.(MD)No.11759 of 2017. In that order, this Court has clearly gave a findings as follows:

"However, the learned Senior Counsel appearing for the respondents has produced before this Court a copy of the deposition of three witnesses who were examined on behalf of the respondents."

"The learned Senior Counsel finally argued that the cause of action arose out side of the jurisdiction of Lalgudi and that therefore, the proceedings are liable to be canvassed. As for as the complaints are concerned, the registered office is stated to be within the jurisdiction of Judicial Magistrate Court, Lalgudi. In this case, it is admitted that Section 202 of Cr.P.C., is satisfied.



The enquiry contemplated was conducted before issuing summons. Hence, this Court is not inclined to accept the case of petitioners."

14. On the side of the respondents, it is stated that the learned Judicial Magistrate has clearly given a findings that trial has not commenced and that Section 202 of Cr.P.C., cannot be invoked. Asking for holding another enquiry before the commencement of the trial amounts to parallel trial. There would be no end for an litigation and the same is a violation under Article 25 of Constitution of India.

15. The learned counsel for the respondents would rely upon a judgment passed by the Hon'ble Supreme Court in the case of **S.M.T. Nagawwa v. Veeranna Shvalingappa Konjalgi and others** reported in (1976) 3 Supreme Court Cases 736, wherein it is stated as follows:

"it would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (I) on the materials placed by the complainant before the court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advertting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

16. On the side of the respondents, it is stated that only under Section 203 of Cr.P.C., the discussion regarding the merits of the case can be dealt with and not under Section 202 of Cr.P.C., and that "mere indication" is sufficient for framing charges.

17. On the side of the petitioner, it is stated that the Hon'ble Supreme Court has given liberty to the petitioner to raise all the points during the trial. The learned Judicial Magistrate wrongly dismissed the petition on a ground which is legally unsustainable in law.

18. On the side of the respondents, it is stated that the Hon'ble Supreme Court in Special Leave Petition has observed that the petitioner can raise all their contentions at the time of trial and that the trial commences only after the framing of the charges and that trial means deciding issues and an adjudication pertaining to the guilt or innocence of the persons.



19.The learned counsel for the respondents would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Hardeep Singh v. State of Punjab and others** reported in **(2014) 3 Supreme Court Cases 92**, wherein it is stated as follows:

"36.In *Narayanaswamy Naidu v. Emperor*, a Full Bench of the Madras High Court held that:

'...Trial begins when the accused is charged and called on to answer and then the question before the Court is whether the accused is to be acquitted or convicted and not whether the complaint is to be dismissed or the accused discharged.'

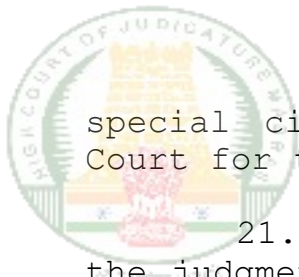
A similar view has been taken by the Madras High Court subsequently in *T.Sriramulu v. K.Veerasalingam*.

37.However, the Bombay High Court in *Dagdu Govindshet Wani v. Punja Vedu Wani* referring to *Sriramulu*

'...There is no doubt that the Court did take the view that in a warrant case the trial only commences from the framing of the charge.... but, according to my experience of the administration of criminal justice in this Presidency, which is not inconsiderable, the Courts here have always accepted the definition of trial which has been given in *Gomer sirda v. Queen Empress*, that is to say, 'trial' has always been understood to mean the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case.'

38.In view of the above, the law can be summarized to the effect that as 'trial' means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the Court informs him of the same, the 'trial' commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken."

20.On the side of the respondents, it is stated that the petitioners have raised same issues before this Court in the earlier proceedings and that they are barred to file this petition on the basis of the same averments. The averments of the petitioners in the earlier proceedings in Crl.O.P. (MD)No.11759 of 2017 are the same. The petitioners are trying to re-agitate the same matter. Only when



special circumstances are spelt out, a person can approach this Court for the second time.

21.The learned counsel for the respondents would rely upon the judgment of the High Court of Delhi in the case of **Vipul Gupta v. State and another** reported in **2018 SCC Online Del 6716**, wherein it is stated as follows:

"SMS Pharmaceuticals Ltd. (supra) holds that the High Court is not completely denuded of its power to exercise its inherent jurisdiction for the second time, despite the earlier petition having been dismissed as not pressed, but while holding so, the Supreme Court highlighted the distinguishing feature in *Rajinder Prasad* (supra) namely that "no special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the High Court under Section 482 of the Code...."

The Supreme Court observed that the facts and circumstances obtaining at the time of the subsequent application of the accused were clearly different from what they were at the time of the earlier application of the respondent accused."

22.The learned counsel for the respondents would rely upon a judgment passed by the Allahabad High Court in the case of **Ranjeet Singh and others v. State of U.P. And another** reported in **1999 SCC Online All 1977**, wherein it is stated as follows:

"With greatest respect it may be pointed out that the aforesaid conclusion is not backed up by any provision in the Cr.P.C., and it amounts to reversing the procedure for trial which is not permissible under the Cr.P.C., challenging the order of issuing process before the Court issuing the said process is in fact requiring the arms of the clock to move anti-clockwise which does not happen or at least should not happen. A parallel trial should not commence before the actual trial begins.....The line of demarcation must be clearly drawn. The view that interlocutory order cannot be challenged in revision before the High Court by an accused, cannot be a reason to support the conclusion that the same interlocutory order will again be subject matter of re-adjudication by relegating the accused summoned to pre-summoning procedure. The said conclusion would even otherwise be unwelcome as it would result in starting a new procedure of pre-trial before start of actual trial."



23. On the side of the respondents, it is stated that the respondents lodged a complaint in the year 2017. This Court has already decided the issue in the year 2018 and the petitioners filed Special Leave Petition and the same was dismissed on 15.03.2019. Already four years over, the memories of the witnesses may fade away due to lapse of time. Just to rock away the memories of the witness, the petitioners have approached this Court. There should be a message to the litigants and the Society not to agitate the same matter for the second time and prayed that cost may be imposed on the petitioners.

24. A perusal of the records reveals that the respondents lodged a private complaint against the petitioners under section 202 of Cr.P.C. The petitioner approached this Court to quash the proceedings in Crl.O.P.(MD)No.11760 of 2017. On dismissal of petition, the petitioner approached the Hon'ble Supreme Court by way of Slp.No.2432 of 2019 which was also dismissed. The cases were taken on file as C.C.Nos.22 and 23 of 2017 respectively. Summon was issued to the petitioners. The contention of petitioners is that an enquiry must have been conducted by the learned Judicial Magistrate, Lalgudi before the framing of charges. The contention of other side is that the sworn statement of the complainant was recorded and witnesses were enquired by the learned Judicial Magistrate before taking cognizance of the offence.

25. The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Birla Buildings Limited v. Birla Corporation Limited** reported in **(2019) 16 Supreme Court Cases 610**, wherein it is stated as follows:

"Though speaking or elaborate reasoned orders are not required at this stage, there must be sufficient indication that there was application of mind by the Magistrate to the facts constituting the commission of offence."

26. As per the observation of the Hon'ble Supreme Court, a speaking or elaborate reasoned order is not required. "Mere indication" that there was application of mind is sufficient for framing charges. Since witnesses were examined before taking cognizance of the offence, there is no irregularity in taking cognizance of the offence by the trial Court.

27. Another ground raised by the petitioners is that the Hon'ble Supreme Court in Slp.No.2432 of 2019 has given liberty to the petitioner to file a petition under Section 202 of Cr.P.C.

28. The learned counsel for the respondents would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Hardeep Singh v. State of Punjab and others** reported in **(2014) 3**



Supreme Court Cases 92, wherein it is stated as follows:

"38. In view of the above, the law can be summarized to the effect that as 'trial' means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the Court informs him of the same, the 'trial' commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken."

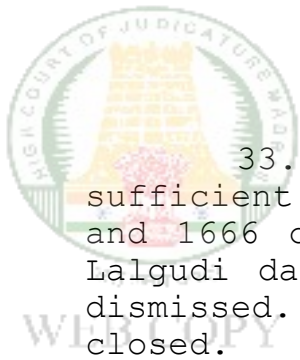
29. The order reads as follows: "The Special Leave Petitions are dismissed. However, all the rights and contentions of the parties at the trial are kept open." Law is well settled that trial commences only after the framing of charges and the contention of the revision petitioner is not sustainable.

30. The contention of the petitioners is that the petitioners are residing in Kolkata and that the learned Judicial Magistrate, Lalgudi, is not having the jurisdiction to enquire the case. On the side of the respondents, it is stated that an issue which was already agitated cannot be re-agitated. The petitioner has raised the above point regarding jurisdiction of the trial Court in the earlier litigation in Crl.O.P.(MD)No.11760 of 2017. The same point is now raised by the petitioners and the petitioners are re-agitating the same point that too before the commencement of the trial.

31. Paragraph no.43 of the order of this Court in Crl.O.P.(MD) No.11759 of 2017 reads as follows:

"43. The learned Senior Counsel finally argued that the cause of action arose out side of the jurisdiction of Lalgudi and that therefore, the proceedings are liable to be canvassed. As for as the complaints are concerned, the registered office is stated to be within the jurisdiction of Judicial Magistrate Court, Lalgudi. In this case, it is admitted that Section 202 of Cr.P.C., is satisfied. The enquiry contemplated was conducted before issuing summons. Hence, this Court is not inclined to accept the case of petitioners."

32. It is seen that the petitioners are re-agitating the same question of jurisdiction again. Re-agitating the same issue cannot be permitted.



33. In view of the above circumstances, there is nothing sufficient enough to interfere in the order in C.M.P.Nos.925, 1665 and 1666 of 2019 on the file of the learned Judicial Magistrate, Lalgudi dated 27.12.2019. Hence, these Criminal Revision Cases are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mrn

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Judicial Magistrate,
Lalgudi.

+3 CC to M/s.S.ANWAR SAMEEM, Advocate SR-16652 to 16654[F] dated
20/04/2021

Crl. R.C.(MD)Nos.288, 289 and 290 of 2020
20.04.2021

PM(CO)

TR(06.05.2021) 11P 5C