

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R. 783 of 2017

Divyajot Singh Jendu

Vs.

Manikaran Analytics Limited

(Represented by Subrata Roy, Legal-In-Charge)

For the Petitioner: Mr. Mayukh Mukherjee, Advocate.

Mr. Abhishek Dutt, Advocate.

Heard on: 07.12.2021

Judgment on: 31.01.2022.

Ananda Kumar Mukherjee, J. :-

1. The petitioner an ex-employee of the complainant has preferred this revisional application under section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the proceedings in Complainant case A.C. No. 711 of 2016 (T.R No. 105/2016) under section 420 and 406 of the Indian Penal Code, 1860 pending before the court of Learned Judicial Magistrate, 6th Court at Alipore, South 24 Parganas.

2. A brief profile of the petitioner's case is that he is a permanent resident of Delhi and was selected for his employment under the opposite party/ Company as a 'Wind Resource Analyst' at Delhi and an offer letter dated 04.03.2014 was sent to him through e-mail, whereby the petitioner was required to serve the company for a minimum period of one year and on condition that if any dispute arose between the company and the petitioner, it will be within the jurisdiction of the Courts at Ranchi.

3. Petitioner on the basis of the appointment letter joined the Opposite Party company on 07.04.2014 at Delhi. The petitioner worked at the company's Delhi office and was never posted at any other office of the company. It is the case of the petitioner that no laptop was provided to him by the company and only a desktop computer was provided at his office. After one year five months and one day of service the petitioner resigned from the Opposite Party company on 08.09.2015 by sending an e-mail. On mutual consent the service of the petitioner was extended up to September 26.09.2015.

4. On 26.09.2015, the Delhi office requested the Kolkata office of Opposite Party for issuing the Experience certificate and Reliving letter to the petitioner, as clearance formality of the petitioner had to be completed. On 19.10.2015 the Opposite Party company issued the Experience certificate and Relieving letter to the petitioner through e-mail and final salary of the petitioner up to 26.09.2015 was credited to his bank account on 07.10.2015.

5. Suppressing such facts the Opposite Party lodged a complaint against the petitioner before the Learned Additional Chief Judicial Magistrate at

Alipore, giving rise to Complaint Case no A.C. 711 of 2016, wherein it is alleged that some valuable documents including one laptop which was entrusted to the petitioner during his service are missing and he did not return the same. It is further alleged in the complaint that the petitioner intentionally cheated the company to the tune of Rs. 1.5 lacks causing a wrongful loss to the company and wrongful gain for himself. The other allegation in the complaint is that the petitioner who figured as an accused in the complaint has committed breach of trust by violating terms and condition of service with the company in this regard and information was given before Anandapur Police Station but police did not take any action against the petitioner.

6. According to the revisionist the criminal proceeding has been initiated in a spiteful manner, only to harass the petitioner after being relieved from his employment and termination of his contract of service. It is contended that lodging of such frivolous complaint is an abuse of the process of law and the court and sought for quashing of the complaint and the proceeding in case A.C. No. 711 of 2016 by invoking the inherent jurisdiction of the court. Further, case of the revisionist is that he is a resident of New Delhi but before issuing process under section 204 of the Cr. P.C, learned Magistrate did not comply the mandatory provision under sub-section (1) of section 202 of the Cr. P.C though revisionist/ accused is residing at a place beyond the area in which the learned Magistrate exercises his jurisdiction.

7. The revisionist in support of his case has raised the following substantial question of law for consideration:

- (a) Whether the impugned proceeding against the revisionist is a gross abuse of the process of law and court and is liable to be quashed/ set aside to meet the ends of justice?
- (b) Whether the complaint lodged by the Opposite Party disclose the ingredients of the offence attributed against the accused/petitioner?
- (c) Whether the learned Magistrate complied the mandatory provisions of law under section 202 of Cr. P.C either by inquiring into the case himself or by directing an investigation to be made by a Police Officer or by such other person as he thinks fit before issuing summons under section 204 of the Cr. P.C?

8. It has been contended that the petitioner was offered appointment for the post of 'Wind Resource Analyst' in 'Manikaran Wind Power Limited' at Delhi and the conditions of his appointments as per clause 2 of the offer letter was that petitioner's place of posting would be at Delhi office of the company and that he must serve the company for a minimum period of one year. As per clause 2 to 4 of Annexure-I of the offer letter all disputes between the petitioner and Opposite Party/Company were to be decided within the jurisdiction of the courts at Ranchi. Learned Advocate argued that the Opposite Party/ company has issued a Relieving letter in favour of the petitioner on 19.10.2015 and credited his salary in the bank account on 07.10.2015. Therefore, the complainant has filed this frivolous complaint against the petitioner after severance of relationship with the petitioner without any mention of retaining of any laptop or valuable documents. Therefore, the question of petitioner

cheating the Opposite Party company cannot arise. It is assiduously argued that the company never entrusted any document or laptop to the petitioner thereby there is no question of any criminal breach of trust for not handing over the alleged articles to the company. It is further argued that Learned Magistrate before issuing summons to the petitioner as accused did not satisfy the conditions laid down in Sub section (1) of section 202 of the Code of Criminal Procedure as the petitioner/ accused was residing outside the jurisdiction of the court. In support of his argument learned Advocate relied upon two decision in **Govind Prasad Kejriwal Vs. State of Bihar and another (2020) 16 Supreme Court Cases 714 and S.S. Binu V. State of West Bengal and 30 other matters 2018 S.C.C on line Cal 1741 : 2018 Cr. I.N 3769 of this High Court**. Learned Advocate of the petitioner drew my attention to paragraph 8 of the petitioner of complaint wherein it is stated that the petitioner/ accused by his conduct has caused loss to the company to the extent of Rs. 1,50,000/- but the complainant in his initial deposition on oath under section 200 of Cr. P.C dated 15.03.2016 has stated that due to the conduct of the petitioner, who has taken away data cards containing client details and laptop provided by the company, a loss of Rs. 5,00,000/- has been caused to the Opposite Party/Company. Learned Advocate for the petitioner further argued that the ingredients of the offence under section 420 of I.P.C do not exists as there was no intention of the petitioner to cheat the company at the time of his induction in the service nor at the time of his release. Apart from that no entrustment of any valuable articles had been made to the

petitioner and in view of the incongruity regarding the Value of laptop and other valuables mentioned in the petition of complaint and the initial deposition of the complainant Subrata Roy, it would be apparent that the complaint is a frivolous one with an object to harass and humiliate the petitioner. Learned Advocate submitted that the complaint case pending against the petitioner for such reason is an abuse of the process of law and court and the same requires to be quashed.

9. Notice of the criminal revision was served upon Opposite Party's office on 22.03.2017 but no one appeared to contest this revisional application. Even after an interim order was passed by this court on 14.03.2017, staying further proceeding of Complaint case No A.C 711 of 2016, no one appeared to contest the revisional application. Hence, the revisional application has been taken up for hearing on its merit in exercise of discretion under section 401 of the Cr. P.C., invoking the power conferred under section 386 of the Cr. P.C.

10. Having heard Mr. Mukherjee, Learned Advocate for the petitioner and on considering the legal issues raised on behalf of the petitioner, it appears that one Subrata Roy, the Legal-in-charge of the company at Kolkata lodged a complaint against the petitioner under section 420 and 406 of the Indian Penal Code at Alipore Court on 22.02.2016 which has been registered as Complaint case No. 711 of 2016. It is undisputed that the accused/ petitioner's address is 7 M, Aram Bag Chitra Gupta Road, New Delhi 110055. The petitioner is admittedly residing outside the jurisdiction of the learned Magistrate 6th Court, Alipore who issued summons in this case without fulfilling the mandatory

provision of section 202 (1) of the Code of Cr. P.C. On a clear reading of the petition of complaint it is gathered that the petitioner was appointed by the company on 07.04.2014 and he worked till 26.09.2015, which is one year and five months. Annexure-I of the Offer letter for appointment dated 04.03.2014 discloses that the minimum tenure of service will be for one year. Therefore, discontinuation of service by the petitioner does not result in violation of his terms of service which is however inconsequential to the offence of cheating and breach of trust alleged. In paragraph 7 of the complaint it has been alleged that the complainant observed that some valuable documents including a laptop which were entrusted to the accused person during his service were missing. However, such arraignments have not been substantiated by the complainant at the time of his examination on solemn affirmation. The petitioner/ accused resigned from his employment with effect from 22.09.2015 by communication through his e-mail dated 08.09.2015 (produced as Annexure P-7) The period of service was extended till 26.09.2015. From the documents filed it is revealed that the resignation of the petitioner was accepted and Relieving letter dated 19.10.2015 and Experience Certificate dated 19.10.2015 have been issued by the Head, H.R. & ADMIN of the company at Kolkata.

11. There is no indication in such documents that the accused/ petitioner had retained any valuable document or laptop or he was ever asked to return any valuable document or laptop to the company after his release. Experience Certificate on the other hand disclose that the employer company found the

petitioner sincere, hardworking and a keen learner. A certificate issued in favour of the petitioner to this extent demolish the allegations made in paragraph 8 of the complaint. Therefore, the conduct of the accused described in paragraph 7 and 8 of the complaint do not attract the ingredients of the offence of cheating against the petitioner by itself without further material, nor is there any element of entrustment of valuable articles.

12. A time tested principle adopted in **Taylor V. Taylor (1876) 1 Ch.D, 426** is that, if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. Therefore, the mandatory provisions regarding inquiry under section 202 of Cr. P.C has to be complied by examination of complainant and other sighted witnesses, without which it cannot be ruled out for certainty that the allegations made in paragraph 8 of the complainant are unfounded to attracted the offence under section 420 of IPC or 406 of the IPC. In the decision of **Govind Prasad Kejriwal Vs. State of Bihar and another (2020) 16 Supreme Court Cases 714**, cited on behalf of the petitioner, it has been held that, “while holding the inquiry under section 202 Cr. P.C, the Magistrate is required to consider whether a prima facie case is made out or not and whether the criminal proceeding initiated are an abuse of process of law or the court or not and/ or whether the dispute is purely of a civil nature or not and/or whether the civil dispute is tried to be given the colour of criminal dispute or not”.

13. In the above case Learned Magistrate had taken cognizance of the offence upon the complaint filed by the respondent against the appellant under section 323,341 and 379 of IPC. The appellant filed an application for quashing before the High Court which was disposed granting liberty to move the learned Magistrate. The prayer of the appellant for discharge was declined and subsequent prayer for quashing of the order passed by Magistrate was dismissed. The appellant thereafter filed criminal appeal before the Hon'ble Supreme Court wherein it was held that none of the ingredients of section 341, 379 and 323 of IPC were satisfied. Therefore, considering the allegations in the complaint as they were, to continue the criminal proceeding against the accused even for the offence under section 323 would be an abuse of the process of court and the law and that it was a fit case to exercise the powers under section 482 of the Cr. P.C, and to quash the impugned criminal proceeding. In my considered view the facts and circumstances of the present case can be distinguished from the facts of the case cited by learned Advocate for the petitioner. In the referred case the complainant and one witness were examined as part of the inquiry under section 202 of the Cr. P.C. It is only after cognizance was taken and summons were issued that the question was raised about absence of a prima facie case, that ingredients of offence taken cognizance of were not satisfied and the impugned proceeding was an abuse of the process of court. In the instant case the provision under section 202 of Cr. P.C have not been complied at all. In the case of **Udai Shankar Awasthi Vs. State of Uttar Pradesh, (2013) 2 SCC 435**, Hon'ble Supreme Court held that

the mandatory provisions needs to be adhered to at first. Therefore, I hold that the decision in the case of **Govind Prasad Kejriwal Vs. State of Bihar and another (2020) 16 Supreme Court Cases 714** shall not be of any assistance to the petitioner accused at this stage.

14. In a decision **S.S. Binu Vs. State of West Bengal** along with 30 other matters; **2018 SCC online Cal 1741; 2018 CRLJ 3767**, the learned Division Bench of this High Court, on reference of several matters by Learned Single Judge has held, that “According to the settled principal of law, the amendment of sub-section 1 of section 202 Cr. P.C, by virtue of section 19 of the Criminal Procedure Code (Amendment) Act, 2005, is aimed to prevent innocent persons, who are residing outside the territorial jurisdiction of the learned Magistrate concerned, from harassment by unscrupulous persons from false complaints. The use of the expression “shall”, looking to the intention of the legislature to the context, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate”. It is further held that, “When an order of issuing summon is issued by a learned Magistrate against an accused who is residing at a place beyond the area in which he exercises his jurisdiction without conducting an inquiry under section 202 Cr. P.C, the matter is required to be remitted to the learned Magistrate concerned for passing fresh orders uninfluenced by the prima facie conclusion reached by the Appellate Court”. While arriving at such conclusion this court relied upon two decision of the Hon’ble Supreme Court in the case of **National Bank of Oman V. Barakara Abdul Aziz, (2013) 2 SCC 488 and Vijay Dhanuka V.**

Najima Mumtaz (2014) 14 SCC 638. Hon'ble Supreme Court reiterated in the case of **Vijay Dhanuka V. Najima Mumtaz** that under section 200 Cr. P.C. examination of the complainant only is necessary with the option of examining the witnesses present, if any. Though no specific mode or manner of enquiry is provided under section 202 Cr. P.C, the witnesses are examined for the purpose of deciding whether or not there is sufficient ground of proceeding against the accused.

15. In the case under considering the learned Magistrate did not hold any inquiry under section 202 of Cr. P.C though it is apparent from the complaint that the accused resided outside the jurisdiction of the court where the complaint has been lodged. Learned Magistrate on the other hand held an inquiry under section 200 of Cr. P.C simpliciter and only examined the complainant and no other witness or document.

16. In the case of **National Bank of Oman V. Barakara Abdul Aziz**, Hon'ble Supreme Court while considering the amended provisions of sub-section (1) of section 202 Cr. P.C observed that, "The duty of a Magistrate receiving a complaint is set out in Section 202 Cr. P.C and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 Cr. P.C is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient

ground for him to proceed further. The scope of enquiry under section 202 Cr. P.C is, therefore, limited to the ascertainment of 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 adverting to any defense that the accused may have”.

17. Under the facts and circumstances of this case I am not inclined to quash the complaint as the proceedings has remained inchoate without compliance of section 202 of Cr. P.C laid down as a mandatory provision. The decision relied upon in **National Bank of Oman**, squarely applies to the present case and I find that learned Magistrate has committed an error of law by issuing summons against the accused petitioner under section 204 of Cr. P.C without holding inquiry under section 202 of Cr. P.C. which is proscribed. Accordingly order dated 15.03.2016 issuing summons upon the petitioner/ accused is found improper and is set aside.

18. The matter is remitted to the learned Judicial Magistrate 6th Court, Alipore for passing order afresh after complying with the procedure laid down in section 202 of the Cr. P.C. The said inquiry should preferably be completed within two months from the date of receipt of the order.

19. In view of my above discussion and finding on the issues raised, the revisional application is allowed on its merit.

20. Criminal section is directed to transmit a copy of this judgment to the Learned Judicial Magistrate 6th court, Alipore at once for information and necessary action.

21. Urgent Photostat certified copy of this judgment, be supplied to the parties, if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)