

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble JUSTICE BIVAS PATTANAYAK

C.R.R. 618 of 2013

Modi Industries Ltd.

Vs

The State of West Bengal And Another

For the petitioner:	Mr. Sourav Chatterjee, Adv.
	Mr. Soumya Nag, Adv.
	Mr. Aditya Tiwari, Adv.
	Ms. Namrata Chatterjee, Adv.
For the State:	Mr. Arijit Ganguly, Adv.
	Ms. Debjani Sahu, Adv.

Heard on: **16.06.2022.**

Judgment on: **14.07.2022**

BIVAS PATTANAYAK, J. : –

1.The present revisional application has been preferred by the petitioner seeking an order under Section 482 of the Code of Criminal Procedure for quashing of proceedings being AC Case No. 2331 of 2012 pending before the Learned Judicial Magistrate, 4th Court, 24-Parganas (South), at Alipore under Section 420/406/120 B of the Indian Penal Code and all orders including order dated 04.12.2012.

2.The brief fact of the case is that the opposite party no.2-complainant namely M/s Universal Paints Corporation, is a proprietorship company dealing with business of selling of paints and other allied materials. It filed a complaint before the Learned Additional Chief Judicial Magistrate, Alipore, with the contention that in the month of February 2011, the accused no.4 & 5 represented on behalf of Accused no. 1 namely Modi Industries Ltd (The petitioner herein) that they intend to appoint clearing and forwarding agent for marketing their products. In the month of March-April 2011, the opposite party no.2-complainant paid a security deposit of Rs.5 lakhs and also spent more than Rs. 7 lakhs for fulfilling the conditions as asked for by the accused persons. In spite of fulfilling of the requirements as above the accused persons started dillydallying the execution of the distributorship agreement and after many persuasions a temporary agreement for distributorship was executed on 02.05.2011 with the terms and conditions mentioned therein. The accused persons asked the complainant to issue two blank cheques in the form of security deposit. The accused persons started the business with the complainant as per terms of distributorship agreement and in and around July, 2011 the accused persons started sending goods of inferior quality resulting in loss to the opposite party no.2-complainant to the tune of Rs. 2,43,000/-. The opposite party no.2-complainant suffered recurring loss as well. On the basis of such averments the complaint case being no. AC 2331 of 2012 came into existence. The opposite party no.2-complainant was examined under Section 200 of the Code of Criminal Procedure and the

summons was issued against the accused persons. Being aggrieved by and dissatisfied with the said proceedings the petitioner has preferred the present revisional application.

3.Mr. Sourav Chatterjee, learned advocate appearing on behalf of the petitioner *firstly*, submitted that as per the amended provision of Section 202 of the Code of Criminal Procedure it is mandatory that whenever the accused is residing at a place beyond the territorial jurisdiction of the originating court an enquiry under Section 202 of the Code of Criminal Procedure is to be directed. However, such provisions of law was not adhered to by the trial court while issuing process against the petitioner-accused no.1 who has its place of business at Modi Nagar, Ghaziabad, Uttar Pradesh which falls beyond the territorial jurisdictional area of the concerned Magistrate. In support of his contention he relied on a decision of Division bench of this Hon'ble Court passed in ***S.S Binu versus State of West Bengal and another*** and other batches of petitions reported in ***2018 Cri LJ 3769***. *Secondly*, he submitted that the allegations made out in the complaint squarely relates to supply of inferior quality of goods which is a general phenomenon in all business transactions of such a nature and cannot be labeled as a deceitful act or an act of conspiracy by the petitioner to breach the terms and conditions of the agreement for causing loss to the complainant-company. As the complaint is a fall out of an agreement by and between the parties hence, it is essentially a civil dispute and does not attract the provisions of Section 420/406/120B of the Indian Penal Code and in support of his contention he relied on the

decision of the Hon'ble Apex Court passed in ***Dalip Kaur & others versus Jagnar Singh and another reported in (2009) 14 SCC 696***. He further submitted that if this Court is of the opinion that Section 202 of the Code of Criminal Procedure has to be followed before issuance of summons then in that event the order of issuance of summons by the trial court be set aside with a direction for necessary compliance of the mandate of law envisaged in the said provision.

4. Inspite of service of notices none appeared on behalf of the opposite party no.2-complainant.

5. With regard to the first limb of submission advanced on behalf of the petitioner that provision of section 202 of the Code of Criminal Procedure has to be mandatorily followed before issuing summons against accused persons outside the territorial jurisdiction of the trial magistrate, it would be proficient to reproduce the relevant provisions for convenience of discussion.

Section 202 of the Code of Criminal Procedure provides as hereunder:

“202. Postponement of issue of process.- (1) *Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may , if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises jurisdiction,] 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 such other person as he thinks fit, for the purpose of decision whether or not there is sufficient ground for proceeding:.....”*

5.1. In **S.S Binu (supra)** this Court has held that the amendment of sub-section (1) of Section 202 of the Code of Criminal Procedure 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 and the use of expression “shall” is a mandatory one before issuance of summons against the accused living beyond the territorial jurisdiction of the Magistrate. The relevant paragraph no.110 of the aforesaid decision is reproduced hereunder:-

“110. To sum up, the reference made by the Learned Single Judge on the five issues are answered as follows:-

I. According to the settled principles of law, the amendment of subsection (1) of Section 202 Cr.P.C by virtue of Section 19 of the Criminal Procedure (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 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.

II. Keeping in mind the object sought to be achieved by way of amendment of sub-section (1) of Section 202 Cr.P.C, the nature of enquiry as indicated in Section 19 of the Criminal Procedure (Amendment) Act, 2005, the Magistrate concerned is to ward off false complaints against such persons who reside at far off places with a view to save them from unnecessary harassment and the Learned Magistrate concerned is under obligation to find out if there is any matter which calls for

investigation by the Criminal Court in the light of the settled principles of law holding an enquiry by way of examining the witnesses produced by the complainant or direct an investigation made by a police officer as discussed hereinabove.

III. 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 enquiry under Section 202 Cr.PC, 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.

IV. Keeping in mind the object underlined in Section 465 Cr.P.C that if on any technical ground any party to the criminal proceedings is aggrieved he must raise the objection thereof at the earliest stage. In the event of failure on the part of an aggrieved party to raise objection at the earliest stage, he cannot be heard on that aspect after the whole trial is over or even at a later stage after his participation in the trial.

V. In cases falling under Section 138 read with Section 141 of the N.I Act, the Magistrate is not mandatorily required to comply with the provisions of Section 202(1) before issuing summons to an accused residing outside the territorial jurisdiction of the learned Magistrate concerned.

5.2.Therefore after the amendment of Code of Criminal Procedure by the Amendment Act of 2005, it is settled that with regard to private complaint, it is mandatory for the trial Magistrate to postpone the issue of process against the accused persons when they are outside its territorial jurisdiction, as it was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to

direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.

6.It is found from the petition of complaint (Annexure P6 at page 40) that the petitioner-accused no.1 (company) as well as other accused persons being the directors, General Manager, Zonal Manager and Business head of the said company respectively are of Modi Nagar, Ghaziabad, Pin-201 204, which is outside the territorial jurisdiction of the trial Magistrate the Judicial Magistrate, 4th court, at Alipore. From the order dated 04.12.2012, passed by the Learned Judicial Magistrate which is under challenge it is revealed that the complainant was examined on S.A under Section 200 of the Code of Criminal Procedure and summons were issued against the petitioner-company and other accused persons after taking cognizance of offence under section 420/406/120B of the Indian Penal Code, without making any statutory enquiry as required under section 202 of the Code of Criminal Procedure or issuing direction as per requirement under the said provision for causing an enquiry.

7.As the aforesaid provisions embodied under Section 202 of the Code of Criminal Procedure is a mandatory one, accordingly, the Magistrate concerned before issuing summons against the petitioner and other accused persons of outside its territorial jurisdiction vide order under challenge should have adhered to the provisions of Section 202 of the Code of Criminal Procedure either by enquiring himself or directing an

investigation to be made by the police officer or by any person he deemed fit.

8.In the case of ***Narmada Prasad Sonkar alias Ramu versus Sardar Avtar Singh Chabara and others, reported in (2006) 9 SCC 601***, the Hon'ble Apex Court have held as follows:

"If the Magistrate had not followed the procedure and has failed to apply his mind as required by law, the order issuing process could be quashed but the Magistrate should be directed to reconsider the matter and pass fresh order in accordance with law."

9. As it is found that there are procedural irregularities, this Court is of the view that if the impugned order dated 04.12.2012, passed by the learned Judicial Magistrate, 4th Court, at Alipore is allowed to continue it would be an abuse of the process of the court. In the aforesaid backdrop and in exercise of the power vested under Section 482 of the Code of Criminal Procedure the impugned order dated 04.12.2012 passed by learned Judicial Magistrate, 4th Court, at Alipore is hereby set aside. However, the matter is remitted to the concerned Magistrate for causing enquiry in terms of Section 202 of the Code of Criminal Procedure and thereafter decide whether or not there is sufficient ground for proceeding and shall reconsider the matter pertaining to said complaint and pass a fresh order on it in accordance with law.

10. Before parting as the impugned order has been set aside with a direction for reconsideration by the trial Magistrate, hence I recuse from

making any observation with regard to the second limb of argument advanced that the alleged offences are not made out being civil in nature relying on decision of Hon'ble Apex Court passed in ***Dalip Kaur (supra)***.

11.The revisional application being **CRR 618 of 2013** is accordingly disposed of with the aforesaid direction.

12.All connected applications stands disposed of.

13.Interim orders, if any, stand vacated.

14.Let a copy of this order be sent to the learned trial court for information and necessary action.

15.Urgent Photostat Certified copy, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Bivas Pattanayak,J)