

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

1) CRM-48816-2023 in/and
CRM-M-27688-2015(O&M)
Date of decision: 28.11.2023

Karamjit Kaur and anotherPetitioners

Versus

State of Punjab and another ...Respondents

2) CRM-M-27845-2015(O&M)

Simranjit Kaur and other sPetitioners

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.K. Khunger, Advocate
for the applicant/petitioners.

Mr. I.P.S.Sabharwal, DAG, Punjab.

None for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

CRM-48816-2023 and CRM-48896-2023

Learned counsel for the applicant/petitioner wishes to withdraw the present applications in both the cases, respectively, for recalling of orders dated 24.08.2023 of this Court as the main cases are listed for today.

Dismissed as withdrawn.

CRM-M-27688-2015 & CRM-M-27845-2015

1. This order shall dispose of both the petitions together, however, the facts are being taken from CRM-M-27688-2015 for brevity.

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2. Learned counsel for the petitioners contends that the petitioners have approached this Court seeking quashing of the complaint No.53 dated 03.02.2014 titled as 'Ravinder Kaur Vs. Karamjit Kaur and others' filed by respondent No.2 under Sections 420/406/504/506/120-B of IPC (Annexure P-1) as well as the summoning order dated 14.05.2015 (Annexure P-2). He contends that the present complaint was filed by respondent No.2 who is mother of Surinder Singh on the allegation that her son got engaged with petitioner No.1-Karamjit Kaur and she was given gold ornaments, Rs.22,000/- as travelling expense and Rs.10,000/- more was spent on the arrangement made for engagement ceremony. Thereafter, on 19.04.2023, the son of respondent No.2 deposited Rs.10,000/- in the account of petitioner No.1-Karamjit Kaur. After expiry of one year, when the parents of petitioner No.1 were approached for fixing the date of marriage, the petitioner No.1 and her parents kept delaying the matter and when son of respondent No.2 spoke to petitioner No.1, she flatly refused to solemnize the marriage with him and made the allegations that the petitioners in connivance with each other had played a fraud of Rs.1,65,000/- with respondent No.2. Respondent No.2 submitted a complaint in this regard to DSP, Talwandi Sabo on 09.01.2014 but the police authority refused to take any action on the said complaint. After filing of the complaint, son of respondent No.2 appeared as CW-1, respondent No.2 examined herself as CW-3 and deposed on the lines of the complaint and her brother-in-law appeared as CW-2 and corroborate the version of respondent No.2, husband of respondent No.2 appeared as CW-4. The learned trial Court after going through the elements and material available on record summoned the petitioners as accused to face trial under Sections 420/406/506/120-B of IPC.

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3. Having heard learned counsel for the petitioners and after perusing the records, it transpires that the matter is pending since the year 2015 and Ms. Richa Mittal, Advocate had put in appearance for Mr. Inderjeet Singh, Advocate for respondent No.2 on 27.08.2015, thereafter, on 19.10.2016, 11.09.2017 and 31.10.2017, no one had put in appearance on behalf of respondent No.2. On 10.01.2018, respondent No.2 appeared in person and Ms. Nupur Chaudhary, Advocate was appointed as *amicus curiae* on behalf of respondent No.2 in both cases. Thereafter, on request of learned counsel of both the parties, the matter was adjourned on several occasions and on 04.09.2019, on the request made by learned counsel for respondent No.2, one last opportunity was granted to file reply. On 13.05.2022, none has put in appearance on behalf of respondent No.2 and till date, no reply has been filed in the present case.

4. On 14.03.2018, learned counsel for the petitioners sought time to address arguments on the issue under Section 202 Cr.P.C. Learned counsel for the petitioners has taken a specific stand in para No.10 that the petitioners are resident of Village Dhaban Kokerian Tehsil Abohar District Fazilka and respondent No.2 has also given the same address in the complaint filed by her. He further contends that before issuance of process against the petitioners by passing the summoning order on 14.05.2015, the reports under Section 202 Cr.P.C. has not been taken by the learned trial Court as such, the summoning order is not sustainable in the eyes of law and he relies upon the judgment of this Court in ***Prem Kumar @ Premo Vs. Balwinder Kaur 2009 (2) RCR (Criminal)***⁴. In spite of granting ample opportunities, neither respondent No.2 has put in

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appearance today nor has she filed a reply till date in respect of last opportunity granted on 04.09.2019. The presence of respondent No.2 is not required in view of the order this Court proposes to pass in the present case.

5. The Hon'ble Supreme Court in **Abhijit Pawar Vs. Hemant Madhukar 2017 (3) SCC 528, National Bank of Oman Vs. Barakara Abdul Aziz and another 2017(3) SCC 528** and judgment of this Court in **Dr. Jasminder Kaur Vs. Raj Karan Singh Boparai CRM-M-20260-2008**.

6. A two Judge Bench of Hon'ble Supreme Court in **Abhijeet Pawar (supra)**, speaking through Justice A.K. Sikri, has held as follows:

“28. No doubt, the argument predicated on Section 202 of the Cr.P.C. was raised for the first time by A-1 before the High Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter (See : National Textile Corpn. Ltd. Vs. Nareshkumar Badrikumar Jagad; [(2011) 12 SCC 695].

29. We may like to record that though Mr. Bhatt had refuted the arguments founded on Section 202 of Cr.P.C., even he had submitted that in case this Court is satisfied that mandatory requirement of Section 202 is not fulfilled by the learned Magistrate before issuing the process, this Court can direct the Magistrate to do so. Mr. Bhatt, for this purpose, referred to the judgment in the case of the National Bank of Oman.

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30. *For the aforesaid reasons, Criminal Appeal arising out of SLP (Crl) No. 9318 of 2012 is allowed thereby quashing the notice dated 24 th November, 2009 in respect of A-1 with direction to the learned Magistrate to take up the matter afresh qua A-1 and pass necessary orders as are permissible in law, after following the procedure contained in Section 202, Cr.P.C.”*

7. A two Judge Bench of Hon'ble Supreme Court in **National Bank of Oman (supra)** has held as follows:

“10. *We are of the view that the High Court has correctly held that the above-mentioned amendment was not noticed by the C.J.M. Ahmednagar. The C.J.M. had failed to carry out any enquiry or ordered investigation as contemplated under the amended Section 202 of the Code of Criminal Procedure. Since it is an admitted fact that the accused is residing outside the jurisdiction of the C.J.M. Ahmednagar, we find no error in the view taken by the High Court. 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 Code of Criminal Procedure. 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 of the Indian Penal Code. The C.J. M. willl pass fresh orders after complying with the procedure laid own*

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in section 202 Code of Criminal Procedure, within two months from the date of receipt of this order.”

8. Further, a coordinate bench of this Court in **Dr. Jasminder Kaur(supra)** has held as follows:

“ Therefore, in view of the law laid down, on which reliance has been placed by learned counsel for the petitioners, I find that the examination of the complainant and eye witness alone under Section 200 Cr.P.C. cannot be held as the enquiry as prescribed under Section 202 (1) Cr.P.C. Admittedly, in the present case, no enquiry as prescribed under Section 202 (1) Cr.P.C. has been made by the Court and noncompliance of the provisions of Section 202 (1) Cr.P.C., which are mandatory in nature, the summoning order cannot be passed where the respondents are residing outside the jurisdiction of the Court where the complaint was filed.”

9. Having heard learned counsel for the parties and keeping in view the facts of the case, the impugned order dated 14.05.2015 (Annexure P-2) is hereby set aside and the matter is remanded back to Sub Divisional Judicial Magistrate, Talwandi Sabo to consider afresh, in accordance with law by taking recourse to Section 202 Cr.P.C.

Disposed of, accordingly.

(HARPREET SINGH BRAR)
JUDGE

28.11.2023
Neha

Whether speaking/reasoned : Yes/No
 Whether reportable : Yes/No