

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-41097-2018 (O&M)
Date of Decision: December 04, 2023

M/s Quantus Management System Pvt. Ltd. and others

.....Petitioners

versus

M/s Onn Industries Pvt. Ltd. and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Satyaveer Singh, Advocate and
Mr. Ashish Pundir, Advocate,
for the petitioners.

Mr. Davinder Singh, Advocate for respondent No.1.

Mr. I.P.S. Sabharwal, DAG, Punjab,
for the respondent-State.

Harpreet Singh Brar, J. (Oral)

1. The petitioners have approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure for setting aside the criminal complaint No.8432/2017 dated 15.07.2017 (Annexure P-2), titled 'M/s Onn Industries Pvt. Ltd. Vs. M/s Quantus Management Pvt. Ltd. and others' pending before the Court of learned Judicial Magistrate Ist Class, Ludhiana as well as summoning order dated 17.07.2017 (Annexure P-3), vide which the petitioners have been summoned to face trial for an offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2. Learned counsel for the petitioners *inter alia* contends that inspite of the fact that the respondent-complainant has already paid the cheques in question

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and the respondent had undertaken to withdraw the complaint vide memorandum dated 26.07.2017 (Annexure P-7). Petitioners are resident of New Delhi and the complaint was instituted at Ludhiana. A perusal of the complaint would show that the addresses of the petitioners were given being resident of 'New Delhi', which is outside the jurisdiction of the learned trial Court at Ludhiana. A perusal of the impugned order dated 17.07.2017 (Annexure P-3) clearly indicates that the learned trial Court has passed the impugned order without taking the recourse to the provisions under Section 202 Cr.P.C.

3. Learned counsel for the petitioners contends that before issuance of process against the petitioners by passing summoning order dated 17.07.2017, the report under Section 202 Cr.P.C. has not been taken by the learned trial Court. Thus, making the summoning order unsustainable in the eyes of law. He further places reliance on the judgment of this Court in ***Prem Kumar @ Premo v. Balwinder Kaur 2009(2) RCR(Criminal) 4.***

4. Having heard learned counsel for the petitioners and perusing the record of the case, it transpires that the petitioners are residents of New Delhi whereas the complaint (supra) was filed before Judicial Magistrate, Ludhiana, Punjab. Furthermore, the summoning order dated 17.07.2017 was passed without following the drill of Section 202 of Cr.P.C.

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 2013(2) SCC 488 and*** judgment of this Court in ***Dr. Jasminder Kaur vs. Raj Karan Singh Boparai CRM-M-20260-2008*** has considered the issue involved in present case.

6. A two judgment Bench of Hon'ble Supreme Court in ***Abhijeet Pawar***

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(*supra*), speaking through Justice A.K. Sikri has held:-

“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.

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 the 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

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or 420 of the Indian Penal Code. The C.J.M. will pass fresh orders after complying with the procedure laid down in Section 202 Code of Criminal Procedure, within two months from the date of receipt of this order.”

Further, a coordinate bench of this Court in **Dr. Jasminder Kaur (supra)** has made the following observations:

“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 non-compliance 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.”

8. Having heard the learned counsel for the parties and keeping in view the facts of the case, the present petition is allowed and summoning order dated 17.07.2017 (Annexure P-3) is set aside and the matter is remanded back to Sub Divisional Judicial Magistrate, Ludhiana to consider the matter afresh in accordance with law, by taking recourse to Section 202 Cr.P.C.

9. The petition is disposed of accordingly.

December 04, 2023

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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No