

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

CRM-M-44087-2016(O&M)
Date of Decision: March 09, 2023

ANIL GROVER

..... Petitioner

Versus

SANJEEV BHANDARI & ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Naveen Chopra, Advocate for petitioner.
Mr. Akshay Jindal, Advocate for respondent No.1 and 2.
Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside the order dated 03.11.2016 passed by JMJC Panipat vide which, post recording of preliminary evidence of the complainant besides the two other witnesses, the trial Court called upon the SHO concerned to investigate and submit report.

Learned counsel for the petitioner submits that having recorded the statements of complainant as well as few other witnesses, under Section 202 of CrPC, the trial Court could not have asked the Police to investigate the matter and submit report upon the allegations levelled in the complaint. Learned counsel further submits that having gone on to record the statements of witnesses, the trial Court in exercise of its powers under Section 202 CrPC could have either issued process or have dismissed the complaint but both the procedures of recording of statements of witnesses, as well as, calling upon the police to submit report could not have been adopted.

On the other hand, while supporting the order passed by the Ld. trial Court, learned counsel for respondents No.1 and 2 relies upon a decision rendered by the Hon'ble Supreme Court in case of "Mr. Bhagat Ram Vs. Surinder Kumar & Ors. 2001(11) SCC 622" and submits that there has been no jurisdictional error in the order passed by the trial Court as the Court was competent enough in exercise of powers under Section 202 Cr.P.C. to call upon the police to investigate and submit a report on allegations levelled in the complaint.

I have heard learned counsel for the parties and have gone through the paper-book. I am unable to find any substance in the submissions made on behalf of petitioner.

The object of Section 202 Cr.P.C. is to enable the Magistrate to ascertain truth or falsehood of the allegations made in the complaint, that too for the limited purpose of finding out whether prima facie case is made out for proceedings with the matter for issuance of process. For the said purpose, the Magistrate can himself hold an enquiry and in order to satisfy himself can even direct an investigation to be made by a police officer. This view has even been derived from the point of law already settled by the Hon'ble Supreme court in case of Mr. Bhagat Ram Vs. Surinder Kumar & Ors. (Supra). Relevant Para 4 of the said judgment has been reproduced hereunder for reference:-

"4. It is clear from a perusal of the order made by the learned Magistrate that he has not done anything other than to comply with the provisions of Section 202(1) proviso(b), Code of Criminal Procedure, that after examining the complainant and his witnesses he found that it was necessary to further probe into the matter and, therefore, directed investigation to be done by the police and after the investigation was done by the police and on report being filed by them, he heard the matter afresh and directed issue of summons. we find that the Procedure adopted by the learned Magistrate is perfectly in order. However Shri S.B. Wad,

learned senior advocate who appears for the respondent no.1 drew our attention to the decision of this Court in **Suresh Chand Jain v. State of M.P.and Anr.**(Supra) and contended that the learned Magistrate had already taken cognizance in the matter before directing the investigation/inquiry by the police and such a course was not permissible. But on the facts in the said case the question that fell for consideration is that whether a Magistrate can direct investigation of the matter before taking cognizance of an offence and without examining the complainant on facts. It was held that he could direct the police to register an FIR and investigate the matter. Even if the scope of investigation is limited as noticed in the said decision, the Magistrate has powers under Section 202(1), Code of Criminal Procedure to direct investigation and in the meanwhile he may postpone issue of process against the accused by adopting any one of the courses mentioned in Section 202(1). As to when cognizance of an offence is taken will depend upon facts and circumstances of each case and it is not possible to state the same with precision. Obviously, it is only when the Magistrate applies his mind for purpose of proceeding under Section 200 Criminal Procedure Code and subsequent Sections that it can positively be stated that he has taken cognizance. To derive this inference we rely upon the decision in **Narayandas Bhagwandas Madhavdas v. The State of West Bengal-AIR 1959 Supreme Court 1118** and **Devarapalli Lakshminarayana Reddy and Ors. v. V.Narayana Reddy and Ors.-AIR 1976 Supreme Court 1672**. In instant case the learned Magistrate has called for an investigation before proceeding further even after examining the complainant and his witnesses on oath. Hence the observation therein would not be of assistance to the respondents in this case. Therefore we set aside the order made by the High Court and restore the proceedings before the learned Magistrate.”

In view of the law laid down by Hon’ble Supreme Court in case of **Mr. Bhagat Ram Vs. Surinder Kumar & Ors.** (Supra) the impugned order does not warrant any interference as I do not see any illegality or perversity in the order passed by trial Court vide which, the Magistrate despite having recorded the statement of complainant and other witnesses called upon the police to investigate about the allegations made in the complaint and to submit report.

Accordingly, the present petition is dismissed.

09.03.2023
tejwinder

(HARKESH MANUJA)
JUDGE

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

