

(202)

2023:PHHC:065965

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46243 of 2017 (O&M)

Date of Decision: 08.05.2023

Suraj Bhan Sharma and others

...Petitioners

Versus

Jasbir Singh Arora

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Jagjit Singh, Advocate for the petitioners.

Mr. Arshdeep S. Bhullar, Advocate for the respondent.

DEEPAK GUPTA, J.

Prayer in this petition is to quash complaint No.11344 dated 12.12.2009 under Section 500, 34 IPC (Annexure P.6), summoning order dated 09.03.2011 passed by learned Judicial Magistrate Ist Class, Chandigarh (Annexure P.7) and the order dated 10.11.2017 passed by learned Additional District Sessions Judge, Chandigarh (Annexure P.8) dismissing the revision.

2. It is contended that complaint (Annexure P.6), titled “Jasbir Singh Arora Vs. Suraj Bhan Sharma and others” was filed by the complainant – respondent- Jasbir Singh Arora to prosecute the petitioners under Section 500/34 IPC in the Court of learned Chief Judicial Magistrate, Chandigarh. Despite the fact that all the accused- petitioners are residents of Kapurthala, i.e. outside the jurisdiction of Chandigarh, where the complaint was filed, learned Magistrate did not make compliance of Section 202 Cr.P.C and passed the impugned summoning order dated 09.03.2011, which has been upheld by the revisional Court. Learned counsel has referred to *Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and another*, **2017(1) AIR Bom. R (Cri) 547**, to contend that impugned order is illegal in

the absence of compliance of Section 202 Cr.P.C.

3. Learned counsel for the respondent- complainant is unable to controvert the aforesaid contention, though he has made a prayer to remand the matter to the trial Magistrate for re-consideration.

4. I have considered the submissions of both the sides and perused the record.

5. It is not in dispute that all the accused- petitioners are residents of Kapurthala. Complaint in question has been filed in Chandigarh Court. Section 202 Cr.P.C reads as under:-

*“(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised 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 his 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 by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding; Provided that no such direction for investigation shall be made—
(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or
(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section [200](#).*

*(2) In an inquiry under Sub-Section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath;
Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*

(3) If an investigation under Sub-Section (1) is made by a person not being a police officer, he shall have for that investigation all

the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”

6. It is evident from the afore-said provision that any Magistrate, authorised to take cognizance of an offence, when finds that accused is residing at a place beyond the area in which he exercises jurisdiction, shall postpone the issuance of process against the accused and shall either enquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as the case may be for the purpose of deciding as to whether there is sufficient ground for proceeding or not.

7. The object of amendment of Section 202 Cr.P.C in 2005 has been explained by Hon’ble Supreme Court in Abhijit Pawar’s case (supra), wherein it was held as under:-

“22) Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 of the Cr.P.C. was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction'. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment. The essence and purpose of this amendment has been captured by this Court in Vijay Dhanuka Vs. Najima Mamtaj,

2014 (3) RCR (Criminal) 793 : 2014 (4) Recent Apex Judgments (RAJ) 459 : (2014) 14 SCC 638 *in the following words:*

*“11. [Section 202](#) of the Code, *inter alia*, contemplates postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.*

12. The words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” were inserted by [Section 19](#) of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

*“False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of [Section 202](#) to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.” The use of the expression “shall” *prima facie* makes the inquiry or the investigation, as the case may be,*

by the Magistrate mandatory. The word “shall” is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word “shall” in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we (2014) 14 SCC 638 find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression “shall” and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.”

8. In the present case, as all the petitioners - accused are residents of Kapurthala, much beyond the jurisdiction of the Courts at Chandigarh, it was required for learned Magistrate to make compliance of the provisions of Section 202 Cr.P.C. It may be noted here itself that during the preliminary inquiry, normally complainant produces his evidence and accused not being before the Court, is not in a position to controvert the same. In case inquiry as contemplated under Section 202 Cr.P.C is conducted through the Police or any person authorised by the court and the accused is involved in the inquiry, obviously, he will be able to put forth his defence and then, on the basis of the report to be submitted by the Police or the authorised person, Court will be in a better position to come to the conclusion as to whether there is sufficient ground for proceeding or not, for summoning of the accused.

Having regard to the afore-said discussion, the impugned

order dated 09.03.2011 (Annexure P.7) passed by learned Judicial Magistrate Ist Class, Chandigarh; and the order dated 10.11.2017 passed by learned Additional District and Sessions Judge, Chandigarh, are hereby set aside. The matter is remanded back to the trial Court concerned with direction to make compliance of Section 202 Cr.P.C and only thereafter, proceed further in accordance with law.

May 08, 2023
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(DEEPAK GUPTA)
JUDGE

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