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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 27.07.2023
Pronounced on: 12.10.2023*

+ **CRL.M.C. 1856/2020 & CRL. M.A.13135/2020**

PREMCO RAIL ENGINEER LTD. & ORS. Petitioners

Through: Mr. Chandra Sekhar, Advocate

versus

STATE & ANR. Respondents

Through: Mr Manoj Pant, APP for
State/R-1
Mr. Anurag Ojha, Mr. Gautam
Barnwal and Mr. Deepak
Somani, Advocates for R-2

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C. '), the petitioners seek quashing of summoning order dated 01.10.2019 passed by learned Metropolitan Magistrate (South), Saket Courts, New Delhi ('learned Magistrate') in Complaint Case bearing No. 15987/2018, titled as 'Vardhman Precision Profiles & Tubes Pvt Ltd. vs. Premco Rail



Engineers Ltd. & Ors.’, filed under Section 200 of Cr.P.C., and quashing of entire proceedings emanating therefrom.

2. Brief facts of the case, as per the complainant/respondent no. 2, are that the complainant company i.e. Vardhman Precision Profiles & Tubes Pvt. Ltd. and the accused company/petitioner no. 1 i.e. Premco Rail Engineers Ltd. had executed a joint venture agreement dated 10.06.2011 and promoted a joint venture concern namely M/s. Premco and Vardhaman for the purpose of applying for tender/bid dated 13.06.2011 with Rail Vikas Nigam Limited (‘RVNL’) for construction of sheds structures, porta blocks, water supply arrangement, general electric works, etc. and the said work contract had been granted in favour of the joint venture by RVNL. The complainant company had also issued a power of attorney dated 10.06.2011 to its lead partner of the joint venture i.e. accused company to act on behalf of the joint venture in connection with the execution of the agreement with RVNL. It is stated that the joint venture had opened two bank accounts, one in Delhi and another in Kolkata. Thereafter, when the work had formally been awarded to the joint venture, both the companies had entered into a fresh joint venture agreement dated 12.09.2011 vide which the sharing ratio between the complainant company and the accused company had been decided as 29:71% respectively. As per the said agreement, out of total value of contract of Rs. 98,17,51,383/- awarded to the joint venture, the complainant company had to discharge and perform works amounting to Rs. 28,31,31,865/- and the accused company had to discharge and perform works valued at Rs. 69,86,19,473/- and



both the companies were to execute their respective share of works and raise bills on RVNL individually through the joint venture. As per complainant, the accused company had agreed with RVNL on its own to provide a discount @ 3.76% on the scheduled rates without discussion with the complainant, however, the complainant company had not agreed for grant of such rebate/discount and for this purpose, another joint venture agreement dated 20.09.2011 had been executed whereby it was agreed between the two companies that the accused company would bear the rebate/discount agreed by it to the RVNL and shall reimburse the amount equivalent to 3.76% so deducted by RVNL from all the bills relating to works performed by the complainant company and the accused company shall release all payments credited into the bank account of joint venture at Kolkata branch in respect of the bills to be raised by complainant company through joint venture on RVNL along with reimbursement of rebate/discount of 3.76%. As alleged by the complainant, the intention of the accused persons had become fraudulent and they had raised false and fabricated bills on the RVNL in respect of the works completed by the complainant company and had got released a total amount of Rs. 148 lacs (approximately) on the basis of such false and fabricated bills from RVNL and had illegally withdrawn the same from the bank account of joint venture. It is further alleged that the accused persons had grossly defaulted in filing the income tax, sales tax returns, and deposits of various tax and duties with the government departments due to which TIN of the joint venture had been suspended by the sales tax department. It was also alleged that



the accused persons had not released the C-Forms in respect of building material worth Rs. 15.2 crores which was supplied by the complainant company to RVNL in respect of the contract. It was further alleged that the accused persons had grossly misappropriated various funds of the joint venture before and at the time of finalization of the balance sheet of financial year 2012-13 and 2013-14. The complainant had also alleged that the accused persons had misappropriated the refunds of TDS which had got deducted by the RVNL at the time of release of various payments to joint venture. It was also alleged that the accused persons had raised fabricated bills amounting to Rs. 1.37 crores on RVNL on account of price variation for the share of the work done by complainant company and had got released the said amount from RVNL. Thus, as per the complainant, the accused persons had illegally defrauded the complainant company and siphoned off substantial amounts from the bank account of joint venture and total amount of such funds siphoned off and misappropriated was approximately Rs. 385.65 lacs (approximately). Therefore, it was alleged that the accused persons had indulged in illegal acts of fraud, breach of trust, criminal conspiracy, etc. in dealing with the matters relating to joint venture, and on these allegations, the complaint under Section 200 Cr.P.C. was filed by the complainant company/respondent no. 2 against the petitioners before the learned Magistrate in October, 2018.

3. On the complaint filed by respondent no. 2, the learned Magistrate had taken cognizance and issued summons against the petitioners *vide* order dated 01.10.2019. Aggrieved by the issuance of



summons, the petitioners have preferred the present petition seeking setting aside of the impugned order dated 01.10.2019.

4. Learned counsel for the petitioners argues that the order dated 01.10.2019 passed by the learned Magistrate summoning the petitioners herein is illegal, non-speaking and reflects non-application of mind and is therefore, liable to be set aside. It is stated that judicial process ought not to be an instrument of oppression or needless harassment and it is argued that the present complaint case is a clear case of abuse of process of law since earlier, the complainant/respondent no. 2 had also lodged a complaint with police in September, 2015, however, after conducting preliminary inquiry, the police had found no ground to register an FIR. It is also stated that complainant has been pursuing civil remedies in the nature of arbitration proceedings, in which, only the award was awaited at the time of filing of present complaint, which clearly demonstrates that the impugned proceedings have been instituted to pressurize the petitioners. It is also stated that the present dispute, at best, can be termed as a pure civil dispute and therefore summons ought not to have been issued, especially in view of the fact that none of the ingredients of the alleged offences are made out from a bare perusal of the contents of the complaint filed before the learned Magistrate. Therefore, it is argued that present petition be allowed and the order of summoning as well as proceedings emanating therefrom be set aside.

5. On the other hand, learned counsel for respondent no. 2 has prayed for dismissal of the present petition terming it as an abuse of



process of law. It is argued that the truthfulness of the factually disputed averments cannot be gone into by this Court at this stage when the trial has yet not commenced. It is also stated that the petitioners have only been summoned to appear before the learned Magistrate and the summoning order is a detailed and speaking order which has been passed after taking into account the averments made in the complaint as well as on the basis of pre-summoning evidence tendered by the complainant. It is argued that the accused persons had procured the payments from RVNL upon misrepresentation and dishonest intention to get wrongful gains, knowing it fully well that the said amount had been released in relation to the work which had been undertaken by respondent no. 2 and payment thereof ought to have been credited in the accounts maintained by the complainant. It is also argued that the present matter is beyond just civil dispute as argued by the petitioners and includes acts such as fabrication of bills, manipulating bank accounts of joint venture etc., which *per se* disclose serious offences under IPC.

6. This Court has heard arguments addressed by learned counsel for petitioners as well as learned counsel for respondent no. 2, and has considered the material placed on record.

7. The relevant portion of summoning order dated 01.10.2019 reads as under:

“...Thus, from the wholesome perusal of the complaint, pre summoning evidence, led by the complainant and the documents relied upon by the complainant at the time of pre summoning CE, prima facie offence U/s 420/406/409/468/471/120B IPC is made out qua the alleged persons. In light of the issue summons



to all the accused persons for answering allegations U/s 420/406/409/468/471/120B IPC.”

8. The provisions of Cr.P.C., relevant for the adjudication of present case, are extracted as under for reference:

“200. Examination of complainant.—

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.—

(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, 1[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 Session; 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 witnesses 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.

203. Dismissal of complaint.—

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process.—

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees



are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87...”

9. In the present case, the complainant company had levelled allegations against the accused persons *inter alia* relating to preparation of false and fabricated bills in respect of the work which had been carried out by the complainant company and obtaining money from RVNL for the said work and thereafter illegally withdrawing the amount from the bank account of joint venture. The accused persons are also alleged to have misappropriated the refunds of TDS which had been deducted by RVNL at the time of release of various payments to the joint venture, along with the allegations that they had committed several defaults and misappropriation in relation to filing of taxes on behalf of the joint venture. The complainant company had also alleged that the accused persons had raised fabricated bills amount to the tune of Rs.1.37 crore on RVNL for the work belonging to respondent no. 2. It is the case of complainant that the bank account of joint venture was a ‘joint property’ owned by both the complainant and the accused and this property was entrusted to the accused company and therefore, the manipulation and misappropriation of funds contained in such joint property would attract offence of criminal breach of trust. It is also the case of complainant that the bills laid before the RVNL for encashment in the account maintained by the accused in Kolkata were forged. It is also the case of complainant that the accused persons had approached



the complainant inducing to form a joint venture to procure the tender from RVNL under impression of the same being a fair deal, and thereafter, had entered into agreements promising to honour the same and on this pretext, they had gained the trust of the complainant company which had handed over its books of accounts and several other confidential documents of their company to the accused persons which had then been misused and misappropriated by the accused persons, thereby committing offence of cheating.

10. The contention raised on behalf of petitioners that the order of summoning is non-speaking is bereft of any merit since the order categorically takes note of the entire set of allegations made in the complaint against the accused persons and thereafter the order records that the offences alleged were *prima facie* made out from the wholesome perusal of the complaint, pre-summoning evidence as well as the documents relied upon by the complainant at the time of pre-summoning evidence. As held by Hon'ble Apex court in catena of judgments, the Magistrate while taking cognizance and summoning an accused is required to apply its judicial mind only with a view to examine as to whether a *prima facie* case has been made out for summoning the accused, and is not required to consider the defence version nor is he required to evaluate the materials in detail. It is also settled that at the stage of summoning, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support thereof to reach a satisfaction that there is sufficient ground to proceed against the accused [*Ref: Sonu Gupta v.*



Deepak Gupta (2015) 3 SCC 424; Mehmood UI Rehman vs. Khazir Mohammad Tund (2015) 12 SCC 420].

11. However, during the course of arguments, learned counsel for the petitioners had drawn the attention of this Court towards the fact that the petitioners herein i.e. the accused persons are not the residents of NCT of Delhi and rather are of Kolkata, West Bengal. In this regard, it was argued that since the accused persons summoned by the learned Magistrate were not residing within the jurisdiction in which the court of learned Magistrate exercises its jurisdiction, the enquiry as contemplated under Section 202 of Cr.P.C. was mandatory to have been conducted by the learned Magistrate.

12. In this regard, this Court notes that the scheme of Section 200 and 204 of Cr.P.C. confers upon the Magistrate, the power to summon the accused after examining the complainant by way of pre-summoning evidence and after going through the contents of the complaint. However, in case the Magistrate feels the need and mandatorily in cases where the accused resides at a place beyond the place over which the Magistrate exercises its jurisdiction, the Magistrate is required to further conduct an enquiry as per Section 202 of Cr.P.C., which mandates that the Magistrate will either enquire himself into the allegations or ask the police to investigate the matter. This extra step which is mandated by law especially in cases where the accused resides at a place beyond the area in which the Magistrate exercises jurisdiction, is aimed at ensuring that innocent persons are not harassed unnecessarily by way of complaints under Section 200 of Cr.P.C. This additional safeguard



and the enquiry to be conducted by the Magistrate under Section 202 was explained by the Hon'ble Apex Court in case of *Vijay Dhanuka v. Najima Mamtaj* (2014) 14 SCC 638. The relevant portions of the judgment read as under:

“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” was inserted by Section 19 of Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23rd of June, 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 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.

“13. In view of the decision of this Court in the case of *Udai Shankar Awasthi v. State of Uttar Pradesh*, (2013) 2 SCC 435, this point need not detain us any further as in the said case, this Court has clearly held that the provision aforesaid is mandatory. It is apt to reproduce the following passage from the said judgment: (SCC p. 449, para 40)

“40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. *The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned.* The same 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.”

(emphasis supplied)

“14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:

“2. (g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;”

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. **No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the**



complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.

15. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process...”

(emphasis supplied)

13. Further, reiterating the decision in case of *Vijay Dhanuka (supra)*, the Hon’ble Apex Court in *Abhijit Pawar v. Hemant Madhukar Nimbalkar (2017) 3 SCC 528* had observed as under:

“23. 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 22 nd 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.

26. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. **What kind of 'enquiry' is needed under this provision has also been explained in *Vijay Dhanuka case*,** which is reproduced hereunder:

“14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether



the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:

“2. (g) ‘inquiry’ means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;”

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.”

27. When we peruse the summoning order, we find that it does not reflected any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of complainant and after perusing the copies of documents filed on record, i.e., FIR translation of complaint, affidavit of advocate who had translated the FIR into English etc. the operative portion reads as under:

“On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 50 read with 34 of the Indian Penal Code. Hence issue process against the accused for the above offences returnable on 23.12.2009. case be registered as Summary Case.”

28. Insofar as, these two accused persons are concerned there is no enquiry of the nature enumerated in Section 202, Cr.P.C...”

(emphasis supplied)

14. The requirement and scope of inquiry under Section 202 of Cr.P.C. was further explained by the Hon’ble Apex Court in case of



Birla Corpn. Ltd. v. Adventz Investments and Holdings Limited

(2019) 16 SCC 610. The relevant observations are as under:

“Complaint filed under Section 200 Cr.P.C. and enquiry contemplated under Section 202 Cr.P.C. and issuance of process

25. Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 Cr.P.C. The purpose of the enquiry under Section 202 Cr.P.C. is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused.

26. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 Cr.P.C. or whether the complaint should be dismissed by resorting to Section 203 Cr.P.C. on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 Cr.P.C., the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.

27. In *National Bank of Oman v. Barakara Abdul Aziz and Another* (2013) 2 SCC 488, the Supreme Court explained the scope of enquiry and held as under:-

“9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for



holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

- (i) on the materials placed by the complainant before the court;
- (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and
- (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have.”

29. In *Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others* (2015) 12 SCC 420, the scope of enquiry under Section 202 Cr.P.C. and the satisfaction of the Magistrate for issuance of process has been considered and held as under:-

“2. Chapter XV Cr.P.C. deals with the further procedure for dealing with “Complaints to Magistrate”. Under Section 200 Cr.P.C, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person “for the purpose of deciding whether or not there is sufficient ground for proceeding”. **If, after considering the statements recorded under Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.**

3. Chapter XVI Cr.P.C deals with “Commencement of Proceedings before Magistrate”. If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) Cr.P.C for attendance of the accused.”



31. Under the amended sub-section (1) to Section 202 Cr.P.C., it is **obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit** for finding out whether or not there is sufficient ground for proceeding against the accused.

61. The object of investigation under Section 202 Cr.P.C. is “for the purpose of deciding whether or not there is sufficient ground for proceeding”. The enquiry under Section 202 Cr.P.C. is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against or whether it is a baseless one on which no action need be taken. **The law imposes a serious responsibility on the Magistrate to decide if there is sufficient ground for proceeding against the accused.** The issuance of process should not be mechanical nor should be made as an instrument of harassment to the accused. As discussed earlier, issuance of process to the accused calling upon them to appear in the criminal case is a serious matter and lack of material particulars and non-application of mind as to the materials cannot be brushed aside on the ground that it is only a procedural irregularity. In the present case, the satisfaction of the Magistrate in ordering issuance of process to the respondents is not well founded and the order summoning the accused cannot be sustained. The impugned order of the High Court holding that there was compliance of the procedure under Section 202 Cr.P.C. cannot be sustained and is liable to be set aside...”

(emphasis supplied)

15. Thus, in addition to examining the contents of the complaint, documents annexed thereto and the pre-summoning evidence led by complainant under Section 200 Cr.P.C. in the present case, the learned Magistrate was obliged to conduct further enquiry under Section 202 and if it had to be done by the learned Magistrate himself and not by a police officer, more witness/witnesses ought to have been examined to ascertain as to whether the allegations



contained in the complaint *prima facie* disclosed commission of alleged offences and were sufficient to summon the accused persons.

16. A perusal of the records and the impugned order in the present case reveals that enquiry as contemplated under Section 202 of Cr.P.C. was not done by the learned Magistrate and evidence of no other witness except the complainant was taken on record, and the accused persons were summoned *sans* it. Thus, the impugned order dated 01.10.2019 is liable to be set aside on this ground.

17. However, as held by the Hon'ble Apex Court in *Abhijit Pawar (supra)*, the matter can be remanded back in such situations to the court of Magistrate to pass an order afresh after complying with the provisions of law.

18. Therefore, the present matter is remanded back to the learned Magistrate for passing an order afresh, after complying with provisions of Section 202 of Cr.P.C. since the accused persons are all resident of Kolkata, West Bengal. It is also clarified that the learned Magistrate shall pass the order after considering the case on its own merits, and shall not be influenced by any of the observations made hereinabove by this Court.

19. In view of above terms, present petition is disposed of alongwith pending applications if any.

20. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 12, 2023/dk