

202

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

CRM-M-4980-2020

Date of decision: 15.02.2024

Antil Atray and others

....Petitioners

Versus

Hitender Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Sanghi, Advocate
for the petitioners.

Mr. Yoginder Nagpal, Advocate
for the respondent.

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, 1973 (hereinafter ‘Cr.P.C.’) seeking quashing of criminal complaint no. COMI-100-2016 filed under Sections 378, 379, 381, 297, 347, 348, 427, 441, 442, 444, 446, 453, 454, 458, 463, 467, 468 read with 34 of the IPC (Annexure P-1) titled ***‘Hitender Kumar versus Anil Atray and others’*** and summoning order dated 11.06.2019 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Panchkula and all subsequent proceedings arising therefrom.

2. Succinctly, the facts are that the respondent-complainant is residing on the first floor of the house of Smt. Usha, mother of petitioner no.1 as a tenant for the last 12 years. A rent deed dated 01.01.2004 was also executed between the respondent and Smt. Usha mother of petitioner No.1. Petitioner no. 1 prepared an authority letter by forging the signature of his mother Smt.

Usha to redirect that the rent be paid by the respondent to him instead of his

mother. On 31.08.2016, when the respondent was out of station, the petitioners-accused along with 11 other persons, broke open the lock of the respondent's rented accommodation, took valuable items and threw the luggage, washing machine, toys etc. out of the apartment. They also took his motorcycle bearing no. HR-03-9006 into their custody. The petitioners also hired henchmen who drank in the verandah, used abusive language and misused articles belonging to the respondent. The respondent made a police complaint on 01.09.2016 but no action was taken. Thereafter, the respondent approached the Court under Section 156(3) of the Cr.P.C.

3. Learned counsel for the petitioners contends that after the police inquired into the complaint filed by the respondent, the same was found to be false. The respondent filed the instant complaint and a civil suit to take possession of first floor of House No. 1109, Sector 7, Panchkula. The civil suit was dismissed by the learned Civil Court vide judgment dated 26.02.2019. He further submits that the learned trial Court did not seek the report under Section 202 of the Cr.P.C. before issuance of process against the petitioners by passing summoning order dated 11.06.2019 (Annexure P-4).

4. Having heard learned counsel for the petitioners and perusing the record of the case, it transpires that the summoning order dated 11.06.2019 (Annexure P-4) was passed without following the drill of Section 202 of the 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 this Court in *Dr. Jasmininder Kaur vs. Raj Karan Singh Boparai CRM-M-20260-2008* has held that the drill of Section 202 of the Cr.P.C. is mandatory in nature.

6. A two Judge bench of Hon'ble Supreme Court in **Abhijeet Pawar (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 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 Co-ordinate 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 11.06.2019 (Annexure P-4) is set aside and the matter is remanded back to learned Judicial Magistrate Ist Class, Panchkula to consider the matter afresh in accordance with law, by taking recourse to Section 202 of the Cr.P.C.

(HARPREET SINGH BRAR)
JUDGE

15.02.2024
Neha

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