

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-8408-2024
Date of Decision: 16.02.2024

Jasbir Singh
.....Petitioner

versus

Manmohan Singh
.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Vaibhav Narang, Advocate
for the petitioner

Harpreet Singh Brar, J. (Oral)

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint No. COMI-356-2021 filed under Section 500 of the IPC (Annexure P-1), summoning order dated 04.10.2023 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Jalandhar and all subsequent proceedings arising therefrom.
2. Succinctly, the facts are that the respondent-complainant is in the business of ready-made garments under the name and style of Madaan Garments in Jalandhar. It is alleged that the petitioner was pressurising the respondent to purchase goods from him. However, when the respondent refused, the petitioner sent a message on a WhatsApp group referring to the respondent as a “defaulter”. In furtherance of the same, claiming that this act of the petitioner has brought disrepute to the respondent, he served a legal notice dated 18.10.2021 seeking Rs. 10,00,000/- as damages and compensation. However,

CRM-M-8408-2024

-2-

since the petitioner failed to make the requisite payment, the instant complaint was filed.

3. Learned counsel for the petitioner contends that the instant complaint is based on false and frivolous grounds as the respondent has placed nothing on record to prove that any such post was made by the petitioner on a public domain. He further submits that the learned trial Court did not seek the report under Section 202 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') before issuance of process against the petitioner by passing summoning order dated 04.10.2023 (Annexure P-2). To support his contention, he 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 petitioner and perusing the record of the case, it transpires that the summoning order dated 04.10.2023 (Annexure P-2) 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 24th 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

CRM-M-8408-2024

-4-

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 petitioner and keeping in view the facts of the case, the present petition is allowed and summoning order dated 04.10.2023(Annexure P-2) is set aside and the matter is remanded back to learned Judicial Magistrate Ist Class, Jalandhar to consider the matter afresh in accordance with law by taking recourse to Section 202 of the Cr.P.C.

9. The petition is disposed of accordingly.

February 16, 2024

reena

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No