

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

CRM-M-10204-2024
Date of decision: 27.02.2024

Parminder Kaur and anotherPetitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhjit Singh, Advocate
for the petitioners.

HARPREET SINGH BRAR, J.

1. The present petition has been filed under under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of criminal complaint no. COMI/82/2022 dated 19.09.2022 filed under Section 406, 420 read with 120-B/34 of IPC read with Section 24 of the Emigration Act, 1983(Annexure P-1) and summoning order dated 04.11.2023 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Jagraon and all subsequent proceedings arising therefrom.

2. Succinctly, the facts are that it was arranged that daughter of the petitioners namely Gagandeep Kaur would marry respondent no. 2. It was mutually agreed that post marriage, respondent no. 2 and his family shall pay the fees while all the expenses for sending her and respondent no. 2 abroad shall be borne by the family of Gagandeep Kaur. It was also agreed that Gagandeep Kaur will arrange for respondent no. 2 to come abroad at the appropriate time. Their marriage was solemnized on 17.07.2017 and Gagandeep Kaur left for

Canada on 29.08.2017. Thereafter, the family of respondent no. 2 transferred a

sum of Rs. 3,75,148/- to Gagandeep Kaur towards her fees. A few months later, the family of respondent no. 2 got suspicious of Gagandeep Kaur's intentions with respect to calling respondent no. 2 abroad and moved false complaints against her.

3. Learned counsel for the petitioners contends that a compromise dated 16.06.2018 (Annexure P-3) was effected between the parties and it was settled that Gagandeep Kaur will call respondent no. 2 abroad once she becomes a Permanent Resident. In spite of the compromise, the family of respondent no. 2 continued filing complaints against the petitioners and their daughter-Gagandeep Kaur. The instant complaint is based on false and frivolous grounds as attested by the report rendered by District Attorney (Legal) concluding that the amount of Rs. 10,00,000/- towards marriage expenses and Rs. 3,75,148/- towards fees was paid by the family of respondent no. 2 of their own accord and the element of fraud is not made out. Further, Gagandeep Kaur got her PR in Canada on 01.01.2021 and she, as well as the petitioners, have been requesting respondent no. 2 to send the relevant documents necessary for calling him to Canada, however, he has refused to do the same.

4. Learned counsel further submits that Binder Kaur, mother of respondent no. 2, has also filed a civil suit (Annexure P-9) against petitioner no. 2 for recovery of Rs. 20,40,000/-, which she allegedly paid towards academic expenses of Gagandeep Kaur and on the other hand, respondent no. 2 has filed a petition under Section 9 of the Hindu Marriage Act, 1955 (Annexure P-10) for restitution of conjugal rights, which contradict to the stand taken by them. 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 04.11.2023 (Annexure P-2).

5. Having heard learned counsel for the petitioners and after perusing the record of the case, it transpires that the summoning order dated 04.11.2023 (Annexure P-2) was passed without following the drill of Section 202 of the Cr.P.C.

6. 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. Jasminder 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.

7. 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.”

8. 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.”

9. Having heard the learned counsel for the parties and keeping in view the facts of the case, the present petition is partly allowed and summoning order dated 04.11.2023 (Annexure P-2) is set aside and the matter is remanded

back to learned Judicial Magistrate Ist Class, Jagraon to consider the matter afresh in accordance with law, by taking recourse to Section 202 of the Cr.P.C.

(HARPREET SINGH BRAR)
JUDGE

27.02.2024
Neha

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