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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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1. CRM-M-11912-2024
Date of Decision: 07.03.2024

Rajiv Chatrath

.....Petitioner

versus

Harsharan Singh Madan and another

.....Respondents

2. CRM-M-11928-2024

Rajiv Chatrath

.....Petitioner

versus

Harsharan Singh Madan and another

.....Respondents

3. CRM-M-11929-2024

Rajiv Chatrath

.....Petitioner

versus

Harsharan Singh Madan and another

.....Respondents

4. CRM-M-12017-2024

Rajiv Chatrath

.....Petitioner

versus

Harsharan Singh Madan and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Ambanshu Sahni, Advocate
for the petitioner

Ms. Geeta Sharma, DAG, Haryana.

Harpreet Singh Brar, J.

1. This common order shall dispose of all the above mentioned petitions as they arise from the same factual matrix. However, for the sake of brevity, the facts are taken from CRM-M-11912-2024.

2. The petitioner has 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 bearing case no. NACT/3293/2021 titled as '*Harsharan Singh Madan v. Tritronics India Private Limited*' instituted on 10.08.2021 under Section 138, 141 and 142 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act') and summoning order dated 04.01.2022 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Faridabad.

3. Succinctly, the facts are that respondent no. 1-complainant agreed to invest Rs. 25,00,000/- through cheques in M/s Tritronics India Private Limited, of which the petitioner is a director, in view of their Solar Power Project. He invested Rs. 19,00,000/- through cheques during the period of 12.06.2015 to 04.07.2015. The remaining amount of Rs. 6,00,000/- was to be paid over a span of 2 years in form of monthly installments of Rs. 25,000/-. Subsequently, respondent no. 2 found out that the said project was never initiated and the accused have been defrauding the public by procuring investment under false pretenses. A police complaint was filed, however a compromise was arrived at where the accused

promised to return the invested amount by means of the cheques, which were dishonoured on presentation for encashment.

Sr. No.	Cheque no.	Cheque date	Amount	Dishonoured vide memo dated	Remarks
1.	0259556	15.04.2021	Rs. 3,00,000/-	11.06.2021	Payment stopped by drawer
	0259793	25.03.2021	Rs. 11,00,000/-	23.06.2021	Exceeds arrangement
	00021	03.04.2021	Rs. 6,00,000/-	05.04.2021	Refer to drawer
				29.06.2021	Payment stopped by drawer
2.	026096	15.05.2021	Rs. 10,00,000/-	17.06.2021	Payment stopped by drawer
3.	031370	15.05.2021	Rs. 5,00,000/-	03.07.2021	Exceeds arrangement
4.	000030	13.04.2021	Rs. 10,00,000/-	07.04.2021	Payment stopped by drawer.

Thereafter, a legal noted dated 08.10.2021 was served on the accused to call upon him to make the payment. Since the accused failed to make the requisite payment in the stipulated time, the present compliant was filed.

4. Learned counsel for the petitioner *inter alia* contends that the instant complaint is based on false and frivolous grounds as the disputed cheques were issued as security in the year 2014 and the same have been misued by respondent no. 1. 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 petitioner by passing a summoning order dated 04.01.2022 (Annexure P-1).

5. Having heard learned counsel for the petitioner and perusing the record of the case, it transpires that the summoning order dated 04.01.2022 (Annexure P-1) 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 petitions are allowed partly and the impugned summoning orders dated 04.01.2022 (Annexure P-1) are set aside and the matters are remanded back to learned Judicial Magistrate Ist Class, Faridabad to consider the matter afresh in accordance with law, by taking recourse to Section 202 of the Cr.P.C.

07.03.2024
Neha

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No