

VIKRAMJEET SINGH AND ANOTHER

...Petitioners

V/S

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Rajvinder Kaur, Advocate
for the petitioners.

Mr. Ramandeep Singh, Sr. DAG Punjab.

Mr. Sahil Bansal, Advocate
for the respondent No. 2.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in the present petition filed under Section 482 of Cr.P.C. is for quashing the summoning order dated 28.11.2019 (Annexure P-5) vide which the petitioners have been summoned in case No. COMI/171/2018 27.04.2018 under Sections 406, 498-A and 506 read with Section 34 of the Indian Penal Code pending in the Court of learned Judicial Magistrate Ist Class, Jalandhar and all subsequent proceedings arising therefrom.
2. Learned counsel for the petitioners *inter alia* contends that the petition No. 1 and respondent No. 2 have got married on 21.10.2015 in Gurudwara Sri Guru Singh Sabha, Janak Puri in Delhi and their marriage was also registered at Delhi and it was a love marriage as both of them were in consensual relationship for the last 10 years. Respondent No. 2 is a citizen of Prague and after their marriage, both of them moved to Prague in Czech Republic in the month of March 2016 and thereafter, a matrimonial dispute arose between both of them and respondent No. 2 filed a divorce petition before the Court of Competent Jurisdiction at Prague. Simultaneously, she also filed a divorce petition before the learned District Court at Jalandhar. Learned counsel

for the petitioners submits that before the passing of the impugned summoning order, the mandatory provisions contained in Section 202 of Cr.P.C. have not been complied with. Perusal of the complaint (Annexure P-4) would indicate that the address of the petitioners is mentioned as “Sunny Valley, CGHS, Dwarka, New Delhi”, whereas the complaint was instituted before the learned Judicial Magistrate Ist Class, Jalandhar and non-compliance of Section 202 Cr.P.C., is sufficient to vitiate the entire proceedings.

3. Learned counsel for respondent No. 2 could not controvert the fact that recourse to mandatory provisions of Section 202 of Cr.P.C. have not been made before passing of the impugned summoning order.

4. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the summoning order dated 28.11.2019 (Annexure P-5) 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 28.11.2019 (Annexure P-5) 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. Pending CRM(s), if any, are also disposed of accordingly.

15.04.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No