

119

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19061-2024 (O&M)
Date of decision: 19.04.2024

Madan Lal and others

... Petitioners

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Gupta, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of complaint bearing No.COMI/80/2022 dated 10.10.2022 (Annexure P-1) filed by respondent No.2 under Sections 494, 406, 498-A, 109, 148, 149 of IPC, pending before the Court of learned Judicial Magistrate 1st Class, Moga and the order dated 14.11.2023 (Annexure P-5), vide which the petitioners were summoned to face trial under *ibid* Sections as well as all the subsequent proceedings emanating therefrom.
2. Succinctly, the facts are that marriage between complainant-respondent No.2 and Sandeep Kumar was solemnized on 11.07.2004 according to Anand Karaj ceremonies. Out of this wedlock, two children were born and

they are presently residing with their father-Sandeep Kumar. After some time, husband of the complainant started maltreating her on the pretext of bringing less dowry. Ultimately, the complainant was turned out of her matrimonial home by the accused persons. It came to knowledge of the complainant that during subsistence of his first marriage with the complainant, accused No.1 Sandeep Kumar performed second marriage with one Seema Rani in the month of January, 2012 and now both are residing as husband and wife and out of that wedlock, one child namely Naksh Arora was born. Hence the complaint was made.

3. Learned counsel for the petitioners, *inter alia*, contends that petitioner No.1 is father-in-law, petitioner No.2 is mother-in-law, petitioners No.3, 5 & 7 are marriage sister-in-law, petitioners No.4, 6 & 8 are brother-in-law of complainant-respondent No.2 and admittedly, they are residing separately in different cities than the matrimonial home of respondent No.2. Perusal of the record clearly indicates that all the allegations made against the petitioners are generic in nature and there is nothing on record to prove their involvement in the marital life of complainant-respondent No.2. Moreover, learned trial Court did not seek the report under Section 202 Cr.P.C. before issuance of process against the petitioners by passing summoning order dated 14.11.2023 (Annexure P-5), as some of the petitioners are residing beyond its jurisdiction. To support his contention, learned counsel places reliance on the judgment of this Court in ***Prem Kumar @ Premo Vs. Balwinder Kaur 2009(2) RCR(Criminal) 4.***

4. Having heard learned counsel for the petitioners and after perusing

the record of the case, it transpires that the summoning order dated 14.11.2023 (Annexure P-5) was passed without following the drill of Section 202 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. Jasminder Kaur Vs. Raj Karan Singh Boparai, CRM-M-20260-2008* has held that the drill of Section 202 Cr.P.C. is mandatory in nature.

6. A two Judge bench of the Hon'ble Supreme Court in *Abhijeet Pawar's* case (*supra*), speaking through Justice A.K. Sikri, has held as under:-

“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's case (*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.”

8. Further, a Co-ordinate Bench of this Court in **Dr. Jasminder Kaur**'s case (*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. Keeping in view the facts and circumstances of the case, present petition is partly allowed. The summoning order dated 14.11.2023 (Annexure P-5) is set aside and the matter is remanded back to learned Judicial Magistrate

1st Class, Moga to consider and decide it afresh, in accordance with law, by taking recourse to Section 202 Cr.P.C.

10. The petition is disposed of accordingly.

19.04.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No