

CRM-M-4777-2018 (O & M)
Date of decision: 09.04.2024

...PETITIONERS

V/S

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Rajan Lakhanpal, Advocate
for respondent Nos.2 and 3.

HARPREET SINGH BRAR J. (ORAL)

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of Criminal Complaint/Protest Petition bearing COMP No.12 dated 25.05.2016 registered under Sections 406, 498-A IPC (Annexure P-2).

2. Brief facts of the complaint are that marriage between complainant/respondent No.2 and respondent No.3/Ashok Singh on 18.01.2006 and at the time of marriage, the parents of complainant/respondent No.2 gave sufficient dowry more than their capacity and they spent huge money on the marriage. That after marriage, in laws of complainant/respondent No.2 started harassing her for bringing less dowry. The complainant/respondent No.2 tolerated the taunts of her in-laws family to live in the family and that her father in law and mother in law demanded Rs.2 lacs for the purpose of sending her and her husband abroad. The complainant/respondent No.2 told that her parents are not in a position to spend any money then her mother-in-law and father in law and brother in law Sangat Singh and Sukha Singh beaten the

complainant/respondent No.2. Even after the birth of son of complainant/respondent No.2, the behaviour of her in-laws did not improve. That the son of complainant/respondent No.2 is a heart patient and he is under the treatment of PG1. That brother in law of complainant/respondent No.2 namely Sangat Singh tried to give kirch blow upon the complainant/respondent No.2. The husband/respondent No.3 of complainant/respondent No.2 came forward to save her and kirch nearly hit him. In this regard, a FIR no.113 dated 24.07.2008 u/s 323, 324 IPC PS Tanda was registered. That mother-in-law, father-in-law and brother-in-law (petitioners herein) of complainant/respondent No.2 demanded Rs.2 lac and complainant/respondent No.2 brought Rs.50,000/- from her parents and gave the same to her in-laws in the presence of respectables. That after some days, the in-laws family of the complainant/respondent No.2 again turned out her, after giving severe beatings to her. Since then, the complainant/respondent No.2 is residing at her parental house. The in-laws family of complainant/respondent No.2 misbehaved with her in connivance with Davinderjit Singh and Major Singh, who are criminal persons and they threatened the complainant/respondent No.2 and her husband that if they made any complaint against the in-laws family, then they will kill the complainant/respondent No.2 and her family. That the dowry articles were handed over to the in laws family of the complainant/respondent No.2 ,at the time of marriage were retained by them in spite of the repeated demands made by the complainant/respondent No.2 to hand over the same. That the wife of Sangat Singh (petitioner) filed an application before SSP, Patiala against the accused persons regarding the facts of demanding dowry from her. As such, the in-laws family of complainant/respondent No.2 is habitual to demand dowry. Hence, a prayer is made to summon the accused (petitioners) under sections 406-498-A of Indian Penal Code.

3. Learned counsel for the petitioners submits that admittedly, the petitioners are resident of village Budhi, Tehsil Dasuya, District Hoshiarpur, whereas, the trial of the complaint (supra) is pending before the concerned jurisdictional Magistrate at Amloh in District Fatehgarh Sahib. It is further contended that drill of Section 202 Cr.P.C. has not been followed. As such, on this ground alone, the summoning order is not sustainable.

4. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that the summoning order dated 25.02.2016 (Annexure P-1) 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. 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.

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 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. Keeping in view the facts and circumstances of the case, the summoning order dated 25.05.2016 (Annexure P-1) is set aside and the matter is remanded back to learned Judicial Magistrate Ist Class, Amloh 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.
10. Pending application(s), if any, also stand(s) disposed of.

April 09, 2024
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(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |