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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28345-2024

Date of decision: 30.05.2024

Piara Singh and another

....Petitioners

Versus

Gurmeet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Ankur Bansal, Advocate
for the petitioners.**HARPREET SINGH BRAR, J. (ORAL)**

1. The present petition has been filed under under Section 482 of Cr.P.C. seeking quashing of impugned complaint No. 86 of 2019 dated 16.03.2019 titled as '*Gurmeet Singh Vs. Sharandeep Singh and others*' under Sections 406, 498-A of IPC pending in the Court of the learned Judicial Magistrate 1st Class, NRI, District Jalandhar (Annexure P-1) and summoning order dated 21.01.2023 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, NRI, District Jalandhar, and all subsequent proceedings arising therefrom.

2. Succinctly, the facts are that the marriage of the son of the petitioners and the daughter of the complainant, namely, Navdeep Kaur, was solemnized on 11.07.2014 at Dhami Castle Palace, Jalandhar. The son of the petitioners is a permanent resident of USA and he came from abroad to solemnize the marriage. After the marriage, the petitioners and their son went back to USA and the daughter of the complainant kept on residing at her parental home. The son of the petitioners sponsored the visa of Navdeep Kaur

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to take her to USA to live with him and accordingly in the year 2015, son of the petitioners, namely, Sharandeep Singh came to India and took Navdeep Kaur to USA and till dated she is residing in USA on the basis of permanent residency. However, after some time, the attitude and behaviour of Navdeep Kaur changed towards the petitioners and her husband. She started harassing the petitioners and their son by levelling false and baseless allegations. Navdeep Kaur was employed in Bilgro Park Mall, USA and from where she started stealing goods. On 27.12.2015, Navdeep Kaur was caught red handed by the security guard of the mall for stealing items from the mall and they handed her over to the police and since it was a criminal act, the police presented the case in the Court of law against Navdeep Kaur and she was sentenced to 06 months of probation and fine of \$2600. It is further alleged that daughter of the complainant became violent with the petitioners and she gave beatings to petitioner No.2 in USA. On account of rude behaviour of Navdeep Kaur, they came back to India in April, 2016. While the petitioners were in India, Navdeep Kaur, in order to falsely implicate the petitioners and their son in false case, attempted to commit suicide and her husband got her admitted in the hospital where no toxic or poison was detected in her body. On coming to know about the said illegal act committed by Navdeep Kaur, the petitioners immediately came back to USA to know the entire acts of events. Thereafter, in order to harass the petitioners, Gurmeet Singh-complainant, in collusion with Navdeep Kaur, by concocting a false story by manoeuvring the facts, moved a false complaint against the present petitioners including other family members.

3. Learned counsel for the petitioners *inter alia* contends that marriage between the son of the petitioners and daughter of the

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complainant/respondent took place in the year 2014 and, thereafter, the petitioners went abroad. The daughter of the complainant was found stealing at her work place in which she was sentenced by the Court of competent jurisdiction in USA. Thereafter, petitioner No.2 initiated legal proceedings against the daughter of the complainant in USA and got eviction order. Son of the petitioners and daughter of the complainant got divorced in USA on 18.05.2018 by way of consent decree. Thereafter, first complaint was made by the complainant before the jurisdictional police authorities in India. The veracity of the allegations examined and they were found to be false. It is further contended that at the time of obtaining divorce, daughter of the complainant has not made any allegation and now, after one year of the divorce, the complaint (*supra*) was filed and petitioners are permanent residents of America and have been residents of their native place of District Kurukshetra and as such, the learned Court below ought to have followed the drill of Section 202 Cr.P.C. Learned counsel has specifically pleaded the non-compliance of Section 202 Cr.P.C. para 12 of page 17 of the paper book and relies upon the judgment of the Apex Court passed in 'Abhijit Pawar Vs. Hemant Madhukar and others' 2017 (1) R.C.R. (Criminal) 405.

4. Having heard learned counsel for the petitioners and after perusing the record of the case, it transpires that the summoning order dated 21.01.2023 (Annexure P-2) was passed without following the drill of Section 202 of 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.***



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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 **Abhijit 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



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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 petitioners and keeping in view the facts of the case, the present petition is partly allowed and summoning order dated 21.01.2023 (Annexure P-2) is set aside and the matter is remanded back to learned Judicial Magistrate 1st Class NRI, District Jalandhar to consider the matter afresh in accordance with law, by taking recourse to Section 202 of the Cr.P.C.

(HARPREET SINGH BRAR)
JUDGE

30.05.2024

Neha

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