

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-32955-2019
Date of Decision: 11.03.2024

NARDEV SINGH RANA
.....PETITIONER
VERSUS
POOJA MONGA
.....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. C.S. Rana, Advocate
for the petitioner.

Mr. R.S. Bajaj, Advocate
for the respondent.

Harpreet Singh Brar, J. (Oral)

1. 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 no. 145 dated 25.04.2017 filed under Section 384, 406, 420, 506 read with 120-B of the IPC and summoning order dated 18.02.2019(Annexure P-6) passed by learned Judicial Magistrate Ist Class, Jalandhar.

2. Succinctly, the facts are that the petitioner-accused's son namely Sharad Kumar Rana approached the respondent-complainant in March, 2016 for arranging tourist visa for Macau, China for himself. He also expressed a desire for employment abroad, however, the respondent informed him that she does not deal with work permits but recommended co-accused Nirmal Singh and Balwinder Singh, partners in M/s N.B. Overseas. On insistence of co-accused Sharad Kumar Rana, the respondent, in liaison with M/s N.B. Overseas, arranged for the said work permit along with the air tickets. The

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petitioner's son left for Macau, however, the petitioner filed a false police complaint dated 07.09.2016 against the respondent to extort money from her. During the investigation of the same, a compromised was arrived at between the petitioner, co-accused Nirmal Singh and Balwinder Singh with the respondent. The accused backed out from the compromise and approached the respondent to settle the balance. The respondent had received Rs.3,70,000/- from Sharad Kumar Rana out of which she had arranged for a visa as well as round trip ticket to Macau, along with boarding and lodging for 10 days. The respondent remitted Rs. 1,00,000/- to the account of M/s N.B. Overseas and as such, no amount was due on part of the respondent to the petitioner's son.

3. The petitioner demanded Rs. 1,00,000/- to close the matter but the matter was settled at Rs. 90,000/-. The respondent issued a cheque bearing no. 024773 for a sum of Rs. 90,000/- as a security cheque. Thereafter, the respondent transferred Rs. 90,000/- to the account of petitioner's son through RTGS and asked the petitioner to return the security cheque. However, the petitioner, instead of returning the cheque, put it up for encashment and the same was dishonoured. The respondent was served a legal notice and the petitioner and his son threatened malicious prosecution, in order to extort money from her, causing her to file the instant complaint.

4. Learned counsel for the petitioner *inter alia* contends that the instant complaint is based on false and frivolous grounds as it is a counterblast to the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act'). 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 summoning order dated 18.02.2019 (Annexure P-6).

5. Having heard learned counsel for the petitioner and perusing the record of the case, it transpires that the following order was passed on 13.11.2019:

“ On 27.09.2019, the following order had been passed:-

“The orders passed by the trial court on 15.06.2019, 24.07.2019 and 29.08.2019 have been produced in Court, showing that the petitioner, i.e. the 'second accused' in the complaint instituted by the respondent, has chosen never to appear before that court, with learned counsel for the petitioner submitting before this court today, that since he is a resident of District Una (Himachal Pradesh), it is not possible for him to appear before the trial court at Jalandhar. Upon query as to how far Chandigarh is from where the petitioner obviously came to file this petition, and as to the distance between Una and Jalandhar, obviously the answer is to the effect that the distance to Jalandhar from Una is far closer. Adjourned to 13.11.2019, with the petitioner directed to first appear before the trial court.”

Today learned counsel for the petitioner has produced in court an order of the JMIC, Jalandhar, dated 01.10.2019, showing that the petitioner had appeared before that court and stands admitted to bail.

On merits, learned counsel points to the fact that the petitioner having instituted a complaint under the provisions of Section 138 of the Negotiable Instruments Act, 1881 against the respondent, Pooja Monga (copy Annexure P-3) on January 12, 2017, thereafter the respondent instituted a complaint against the petitioner on 25.04.2017, as a counter blast thereto.

He further submits that in fact before issuing process of summoning to the petitioner, despite the fact that the petitioner admittedly lives beyond the jurisdiction of the Court at Jalandhar, the procedure to be adopted under Section 202 of the Cr.P.C. was not adopted.

He relies upon a judgment of the Supreme Court in Abhijit Pawar v. Hemant Madhukar Nimbalkar and another, 2017 (1) RCR (Crl) 405, to submit that therefore the proceedings against the petitioner at this stage would not be maintainable.

Notice of motion be issued to the respondent, returnable on 13.12.2019.

Process dasti as well.

In the meanwhile till the next date of hearing only and specifically, the proceedings against the petitioner before the trial court shall remain stayed.

However, it is made clear that if the respondent is not shown to be served by the next date of hearing, the interim order would stand vacated.”

6. The petitioner is a resident of District Una, Himachal Pradesh while the trial is pending before learned Judicial Magistrate Ist Class, Jalandhar. Indubitably, the impugned summoning order dated 18.02.2019 (Annexure P-6) was passed by the learned trial Court without following the drill of Section 202 Cr.P.C.

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 petition is partly allowed and summoning order dated 18.02.2019(Annexure P-6) passed by learned Judicial Magistrate Ist Class, Jalandhar is set aside and the matter is remanded back to the learned trial Court to consider the matter afresh in accordance with law, by taking recourse to Section 202 of the Cr.P.C.
10. Disposed of. Pending miscellaneous application(s), if any, shall also stand disposed of.

March 11, 2024
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(HARPREET SINGH BRAR)
JUDGE

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