



Australia, petitioner No.1 started abusing respondent No.2 and insulting her parents. Thereafter, again marriage of the complainant/respondent No.2 and petitioner No.1 was solemnized on 09.02.2013 in accordance with Sikh rites and ceremonies in India at Hoshiarpur. Out of the wedlock, no child was born. However, matrimonial dispute ensued between the couple on account of demand of dowry. The matter was compromised so many times but to no effect. Hence, the complaint.

3. There is no representation on behalf of the petitioners. As such, this Court has no other option but to decide the present case on its own merits, in view of the fact that the present petition pertains to the year 2019.

4. A perusal of the record indicates that the petitioners have been summoned to face trial without following the drill of Section 202 Cr.P.C. in a complaint case. Further, divorce has already taken place between petitioner No.1 and respondent No.2 in a jurisdictional Court at Australia. The perusal of memo of parties indicates that petitioners are residents of Ludhiana, whereas, the complaint (*supra*) was instituted before the learned Divisional Judicial Magistrate, Mukerian. It is clearly discernible that the petitioners are residing away from the jurisdiction of learned trial Court.

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 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 respondent No.2 and keeping in view the facts of the case, the present petition is accordingly partly allowed and the impugned summoning order dated 15.07.2019 passed by learned trial Court (Annexure P-5) is set aside and the matter is remanded back to learned Sub Divisional Judicial Magistrate, Mukerian i.e. the trial Court to consider the matter afresh in accordance with law, taking recourse to Section 202 of the Cr.P.C.

9. Pending miscellaneous application(s), if any, also stand(s) disposed of.

September 16, 2024 <i>manisha</i>	(HARPREET SINGH BRAR) JUDGE
(i) Whether speaking/reasoned	Yes/No
(ii) Whether reportable	Yes/No