

269 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-48214-2023 (O&M)

Date of Decision: 15.01.2024

M/S JAI HANUMAN RICE AND GENERAL MILLS AND ANR.

...Petitioners

V/S

SUMITA JAIN

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhinav Aggarwal, Advocate
for the petitioner.

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 seeking quashing of complaint case bearing CIS No. NACT/107/2020 dated 02.07.2020, titled as *Smt. Sumita Jain Vs. M/s. Jai Hanuman Rice And General Mills & Others* under Section 138 read with Section 142 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') as amended upto date read with Section 420 of Indian Penal Code and the summoning order dated 20.10.2020 (Annexure P-4) passed by Sub Divisional Judicial Magistrate, Ganaur, Sonipat in the aforementioned complaint.

2. The brief facts of the present case are that the petitioner-accused borrowed Rs. 1,34.26/- lakhs from the complainant firm as the petitioner was in dire need of money as his business was about to shut down due to scarcity of money and the accused-petitioner took financial help from the complainant in the financial year 2018-19. In discharge of his legal liability, the petitioner issued two cheques bearing Nos. 082627 and 013131 dated 10.04.2020 and 17.04.2020, respectively, for amount of Rs. 25,00,000/- (each), both drawn on Canara Bank, Karnal in favour of the respondent-

complainant. However, on presentation, both the abovesaid cheques were dishonoured vide memos dated 14.05.2020 with remarks "**Drawer Signatures Differs**". Thereafter, the complainant sent a legal notice dated 18.05.2020 issued through her lawyer, thereby demanding the payment of the dishonoured cheques, but to no avail. Thereafter, the complainant-respondent filed a complaint dated 14.05.2020 under Section 138 and 142 of the Act against the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that perusal of the complaint would indicate that the petitioner resides beyond the local jurisdiction of the learned trial Court as discernible from the complaint (Annexure P-3). As such, the learned trial Court was required to follow the drill of Section 202 of Cr.P.C. but no such recourse has been taken by the learned trial Court and placed reliance upon the judgment of this Court in CRM-M-50030-2021 decided on 30.11.2021 titled as ***Parwinder Singh Vs. Mukhdave Singh***, Hon'ble Supreme Court's judgment ***Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and Another*** passed in ***Crl. A.No. 1225/2016 and Vijay Dhanuka Vs. Najima Mamta (2014) 14 SCC 638***.

4. Having heard learned counsel for the petitioners and perusing the record of the case, it transpires that the petitioner is a resident of House No. 2168, Sector-7, U.E., Karnal, District Karnal whereas the complaint (supra) was filed before Sub Judicial Magistrate, Ganaur, Sonapat. Furthermore, the summoning order dated 20.10.2020 (Annexure P-4) was passed without following the drill of Section 202 of Cr.P.C.

5. Reliance can be placed upon judgment of Hon'ble Supreme Court passed 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 judgment of this Court passed in CRM-M-20260-2008 titled as **Dr. Jasminder Kaur vs. Raj Karan Singh Boparai**.

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."

8. Further, a coordinate 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 petitioner and keeping in view the facts of the case, the present petition is allowed and summoning order dated 20.10.2020 (Annexure P-4) is set aside and the matter is remanded back to Sub Divisional Judicial Magistrate, Ganaur, Sonapat to consider the matter afresh in accordance with law, by taking recourse to Section 202 Cr.P.C.
10. The petition is disposed of accordingly.

15.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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