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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 3943/2023 & CRL. M.A. 14836/2023

SHAILESH VORA & ORS.

..... Petitioners

Through: Mr. Jay Savla, Sr. Advocate with Mr.
Prabhat Chaurasia, Mr. Rajpal Singh
and Mr. Anirudh Jamwal, Advocates.

versus

VIRENDER KUMAR GUPTA

..... Respondent

Through: Mr Abhir Datt, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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06.05.2024

1. By way of the present petition filed under Section 482 Cr.P.C., the petitioner has put forth a grievance against the order dated 13.03.2023 passed by the learned Additional Chief Metropolitan Magistrate-2, Tis Hazari Courts, Delhi in complaint case being CIS No.516426/2016 .

2. In the said criminal complaint, the respondent/complainant has alleged that the petitioners alongwith one *Hem Shailesh Vora* (hereinafter, '*accused person*') entered into an agreement to sell with him for his 1/4th share in the land situated in revenue area of village Kandiwali, Boriwali, Mumbai through their firm *M/s Vora Properties Pvt. Ltd.* on 29.08.2003. However, the accused persons failed to make the balance payment on or before 29.11.2003 as contemplated in the agreement. The respondent filed a suit seeking cancellation of the said agreement, whereafter the accused person in connivance with each other made certain illegal changes in the said agreement and also threatened the respondent to sell the land at the



agreed upon rate, even though the rate of the property has since appreciated multi-fold.

3. One of the primary contentions raised by learned senior counsel for the petitioner is that the petitioners, who have been impleaded as accused in the aforesaid complaint case are indisputably resident of Mumbai and that the summoning order has been passed in total disregard of Section 202 Cr.P.C. inasmuch as the Magistrate has failed to conduct an enquiry as mandated under the aforesaid section. In support of the said contention, learned Senior Counsel for the petitioner has placed reliance upon the Supreme Court decisions in (i) Mehmood UI Rehman v. Khazir Mohammad Tunda and Ors. reported as **(2015) 12 SCC 420**, (ii) Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr. reported as **(2017) 3 SCC 528**, (iii) Randheer Singh v. State of U.P. and Ors. reported as **(2021) 14 SCC 626** and (iv) Mitesh Kumar J. Sha v. State of Karnataka and Ors. reported as **(2022) 14 SCC 572**.

4. On the other hand, learned counsel for the respondent has defended the impugned order by contending that while passing the said order, the Magistrate not only considered the complaint but also the documents filed with it, which itself shows that Magistrate has conducted an inquiry and satisfied itself before passing the impugned order.

5. I have gone through the material placed on record as well as the judgments relied upon by learned Senior Counsel for the petitioner.

6. There can be no cavil with the legal position that Section 202 Cr.P.C. mandates postponement of issuance of process in cases wherein the accused is residing at a place beyond the area in which a Magistrate exercises jurisdiction and envisages an inquiry/investigation to be conducted before



issuance of the said process. This position of law is further strengthened by the observations made by the Supreme Court in Abhijit Pawar (Supra):-

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23. Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 CrPC was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-6-2006 by adding the words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction”. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment.

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26. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of “enquiry” is needed under this provision has also been explained in Vijay Dhanuka case, which is reproduced hereunder:

“14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:

‘2. (g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;’



It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.”

xxx”

7. Adverting to the facts of the present case, a perusal of the impugned order would show that the same is completely silent on the aspect of inquiry as mandated under Section 202 Cr.P.C. in a situation like the present wherein the accused are residing beyond the jurisdiction of the Magistrate. The impugned order is ante the decisions passed by the Supreme Court and accordingly the impugned order is set aside.
8. Consequently, the matter is remanded back for fresh consideration.
9. Further, considering that the complaint is of the year 2007, it is directed that the proceedings be conducted expeditiously.

MANOJ KUMAR OHRI, J

MAY 6, 2024/ssc