

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 2292 of 2016

**N.P. Mathi Lingan
Vs.
The State of West Bengal & Anr.**

For the petitioner : Mr. Sourav Chatterjee, Id. Sr. Adv.
: Mr. Sumanta Ganguly
: Mr. Shiv Ratan Kakrania
: Mr. Karanjeet Sharma
: Mr. N. Das

For the OP No. 2 : Mr. Satadru Lahiri
: Mr. Soumyajyoti Nandy
: Mr. Gyan Prakash
: Mr. Jyotirmoy Talukder

Judgment on : **03/09/2025**

Rai Chattopadhyay, J. :-

1) The petitioner is the accused person in criminal proceeding No. CS 0025782 of 2015, filed before the Chief Metropolitan Magistrate, Kolkata which is now pending before the Metropolitan Magistrate 14th Court at Kolkata. The petitioner by filing the instant case under Section 482 of the Code of Criminal Procedure, 1973, has sought for quashing of the said criminal proceeding being No. CS 0025782 of

2015 and all orders of the Magistrate passed in connection with the said case.

- 2)** The authorized representative of the opposite party no. 2/complaint company has filed the complaint before the Magistrate on May 21, 2015. The petitioner is the accused person No. 7 and Company Secretary of the complainant company and said to have been looking after the day to day business affairs of the company. He is said to have been in control and management thereof. After careful perusal of the written complaint lodged by the opposite party No. 2 before the Magistrate it appears that a hypothecation loan agreement was entered into between the complainant company and the accused No. 1 company, of which the accused No. 7 that is the present petitioner has been employed as a Company Secretary. At the time of entering into the said hypothecation loan agreement, the accused persons had opted for ECS Mandate and accordingly issued standing instructions to its banker being MICR No. 600072002 to debit sums of Rs. 48,33,630/- and Rs. 44,09,000/- respectively from its bank account No. 11/06020100005067, towards payment of the Equated Monthly Installment (EMI), in respect of repayment of loan pursuant to the hypothecation loan agreement as mentioned above. Such EMIs through ECS Mandate were to be deposited/credited in the bank account of the complainant company. Therefore, after procuring the loan amount pursuant to the hypothecation loan agreement and to

discharge the burden of legally enforceable liability to repay the same, the accused persons had initiated payment of EMI in favour of the complainant company through the ECS mode.

3) Allegedly, the electronic transfer of fund in favour of the complainant company was dishonored. The Complainant says to have received information regarding dishonor of electronic fund transfer, vide debit memo dated March 5, 2015. [Being Transaction Nos. 102 319 6413 and 103 292 5358]. The alleged dishonor with regard to transfer and credit of fund in favour of the complainant company happened on January 22, 2015 and February 23, 2015 respectively due to “Insufficient Fund”, as remarked. Such alleged dishonor of fund transfer in favour of the complainant company was followed by a demand notice dated March 26, 2015, which has been admittedly posted on April 6, 2015.

4) Allegedly also, in spite of service of the demand notice and receipt thereof by the accused persons, they have failed to make the payment of the amount of EMIs which were earlier dishonoured. Hence, the complaint was lodged under Section 25 of the Payment And Settlement Systems Act, 2007.

5) The Chief Metropolitan Magistrate, Kolkata has taken cognizance of offence and transfer the record for trial and disposal to the Metropolitan Magistrate, 14th Court at Kolkata. Hence, being aggrieved, the petitioner has come up with the instant case to seek relief that the entire criminal proceeding against him may be quashed.

6) The petitioner accused person No. 7 has been represented by Mr. Sourav Chatterjee, learned Senior Counsel. Mr. Satadru Lahiri has appeared for the opposite party No. 2/complainant company.

7) Respective arguments on behalf of the petitioner as well as the opposite party No. 2 may be summarized in the following manner:-

8) The petitioner's case:

8.1. Illegal taking of cognizance:

- The order taking cognizance by the Chief Metropolitan Magistrate is alleged to be a "pre-typed cyclostyle order-sheet" with handwritten blanks, indicating a lack of application of judicial mind.
- This is argued to be a violation of the principle that taking cognizance requires a "great exercise of judicial mind" and cannot be a mechanical process.

- The brief cites a previous High Court decision (Pradip Churiwala & Anr. Vs. Dilip Kumar Nemani) supporting this argument.
- It also highlights a violation of Rule 183 of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985, which mandates that orders requiring judicial discretion and final orders be recorded by the Magistrate in their own hand or typed by them.
- This violation is further supported by citing two other High Court decisions (Sharmistha Chowdhury and Another Vs. State of West Bengal and Others, and Mainak Das Vs. State of West Bengal and Another) that followed the same principle.

8.2. Illegal summoning order due to non-application of Section 202 of the Code of Criminal Procedure:

- The summoning order was issued without resorting to the mandatory provisions of Section 202 of the Code of Criminal Procedure.
- This is particularly relevant because all accused persons, including the petitioner, are residents of places outside the State of West Bengal.
- The brief cites Supreme Court decisions (In Re: Expeditious Trial of Cases under section 138 of N.I.

Act, and Sheetal Amit Patil vs. State of West Bengal) emphasizing that an inquiry under Section 202 is mandatory when the accused resides outside the court's jurisdiction.

- The argument is that the Trial Court failed to conduct this mandatory inquiry to determine if there were sufficient grounds to issue process.
- The petitioner relied on the decision of this court in Sheetal Amit Patil v. State of West Bengal [2021 SCC OnLine Cal 1693] regarding compliance of section 202 of the Code of Criminal Procedure where, it held that since the accused resides outside the jurisdiction of the Court, an enquiry under Section 202 CrPC was mandatory before issuing process. The Court has held that the Trial Court has failed to conduct such an enquiry and thereby has vitiated the order of issuance of process and subsequent proceedings. Accordingly, the impugned orders were set aside and the matter was remanded to the Trial Court to proceed afresh from the stage of enquiry under Section 202 CrPC.

8.3. Argument which may be explanatory in nature and is actually beyond the complaint itself, would not be maintainable:

- The petitioner submitted that the opposite party cannot put forth explanatory arguments that are absent from

the complaint, as doing so would amount to an impermissible amendment or embellishment of the complaint. It is a settled principle that a criminal complaint cannot be amended held in the decision of the apex court in *S.R. Sukumar v. S. Sunaad Raghuram* [(2015) 9 SCC 609].

- The court held that an amendment to a criminal complaint may be permitted if it only cures a formal infirmity without causing prejudice to the other side, even though the Code contains no express provision for such amendment. However, where the amendment goes beyond a curable defect or is likely to prejudice the accused, the court cannot allow it.

8.4. On merits: statutory demand notice issued beyond the period of 30 days:

- The proceedings are based on Section 25 of the Payment and Settlement Systems Act, which applies the provisions of Chapter XVII of the Negotiable Instruments Act.
- This means the statutory period for issuing a demand notice is 30 days.

- The Petition of Complaint itself states that the demand notice was posted on 6.4.2015, which is beyond the statutory period.
- The brief argues that the opposite party's attempt to exclude holidays (Doljatra and Holi) to bring the notice within the period is a "misconceived and erroneous" computation.
- Even if holidays were excluded, the calculation still shows the notice was issued beyond the 30-day limit.
- There is no provision for condonation of delay in issuing such a demand notice, making the proceedings liable to be quashed.
- The brief also argues that the opposite party's attempt to explain the dates is an impermissible amendment of the complaint.

8.5. Lack of basic facts constituting an offence:

- The complaint is argued to be devoid of the basic facts necessary to constitute an offense under Section 25 of the Payment and Settlement Systems Act.
- This is because the statutory requirements, specifically the timely issuance of the demand notice, were not met.

- The petitioner has relied on ***J Th Zwart v. Indrani Mukherjee*** reported in **1989 SCC OnLine Cal 289** which held that for a Magistrate to take cognizance under Section 190(1)(a) CrPC, the complaint must not only allege commission of an offence but also disclose the basic facts constituting the offence. While evidential or detailed particulars are unnecessary, the complaint must state the essential primary facts forming the basis of the allegation.

8.6. Allegations of the petitioner being vicariously liable is irrelevant:

8.6.1. The argument that the petitioner is vicariously liable as Company Secretary is deemed insignificant because the basic statutory requirements for invoking penal provisions were not met by the opposite party.

9. The following judgments have been relied on by Mr. Sourav Chatterjee, learned Senior advocate for the petitioner -

i) ***Kamlesh Kumar Vs. State of Bihar and Anr.*** reported in **(2014) 2 SCC 424**

ii) ***Anita Malhotra Vs. Apparel Export Promotion Council and Anr.*** reported in **(2012) 1 SCC 520**

10. Argument by the Opposite Party:

10.1. The order of the Magistrate taking cognisance is absolutely in consonance with the settled proposition of law and the petitioner has not suffered any prejudice. Hence no interference is called for.

- The order taking cognizance is in accordance with settled legal propositions and has not caused prejudice to the petitioner, therefore, no interference is warranted.
- The contention that the order was recorded on a pre-typed cyclostyle sheet filled by hand is contrary to the evidence on record.
- The order was passed under dictation by the Learned Chief Metropolitan Magistrate and signed by him, which complies with the relevant rules.
- The Magistrate acted within the parameters of Section 190 of the Code of Criminal Procedure and did not act mechanically or delegate judicial discretion.
- The judgments relied upon by the petitioner are factually distinguishable and not applicable to the present case.
- Irregularities in taking cognizance, if any, are covered under Section 460(e) of the Code of Criminal Procedure, which deals with irregularities that do not vitiate proceedings.

- The petitioner has not demonstrated any extreme prejudice suffered due to alleged irregularities.
- The objective of Section 465 of the CrPC is to prevent delays, and even if an order taking cognizance is irregular, it does not vitiate proceedings.
- The argument that the order was passed in a mechanical way, as seen in cited cases, is not applicable here as the Magistrate applied judicial mind and the order was dictated.
- The petitioner has not demonstrated a "failure of justice" due to any irregularity, and therefore, the proceedings are not vitiated.

10.2. Allegation of non-compliance of the mandate of section 202 of the Code of Criminal Procedure 1973 is unfounded and baseless. There is no such violation of law and the Magistrate has duly issued process against the petitioner on the basis of sufficiency of available materials against him in the complaint.

- The core argument presented is that the Learned Magistrate did not fail to comply with Section 202 of the Code of Criminal Procedure, 1973, when issuing process against the petitioner. That the Magistrate illegally issued summons without following the mandatory provisions of Section 202 of the CrPC. This was based on the fact that the petitioner and other

accused resided outside West Bengal, as indicated in the complaint's cause title.

- The Magistrate received the case record on transfer and the complainant filed a complaint under Section 25 of the Payment and Settlement Systems Act, 2007, read with Chapter XVII of the NI Act.
- An affidavit was filed, as examination of the complainant under Section 200 CrPC.
- Crucially, no other witness was examined.
- The Magistrate conducted an enquiry under Section 202 CrPC, and the document states there is a "presumption in favour of the complainant."
- After perusing the complaint, affidavit, and documents, the Magistrate found sufficient grounds to proceed against the accused persons.
- Summons were ordered to be issued via registered post with acknowledgement due, at the complainant's cost and risk.
- The document asserts that the Magistrate's order demonstrates an enquiry as mandated by Section 202 CrPC was undertaken, involving conducting a preliminary enquiry under Section 202 CrPC; perusing and appreciating the materials on record, including documents, for a limited enquiry as envisaged by Section 202 CrPC; applying judicial mind to the merits

of the case and recording judicial satisfaction of a prima facie case against the accused.

- A Supreme Court decision has been cited ***In Re: Expeditious Trial of Cases under section 138 N.I. Act*** reported in **(2021) 16 SCC 116** which allows for:
 - Taking evidence of witnesses on affidavit for Section 202 enquiry.
 - Restricting the enquiry to the examination of documents without insisting on witness examination in suitable cases.
 - The scope of enquiry under Section 202 can be restricted to the perusal of documents without recording examination of witnesses.
 - The Magistrate's actions are deemed to be in line with this Supreme Court guidance, particularly regarding the limited scope of enquiry in such cases.
- Distinguishing the case of the petitioner's reliance:
 - A judgment cited by the petitioner (**Sheetal Amit Patil & Anr. Versus State of West Bengal**) is distinguished. In that case, the Magistrate issued process without any enquiry under Section 202 CrPC, even though the accused were outside the territorial jurisdiction. In contrast, in the

present case, an enquiry under Section 202 CrPC was conducted in the manner prescribed by the Supreme Court.

- The Learned Magistrate's order is not flawed for alleged non-compliance with Section 202 CrPC.
- The Magistrate's satisfaction regarding the commission of the offence by the petitioner is sufficient to satisfy the mandate of Section 204 CrPC.
- The law does not require detailed reasons for issuing process; a finding of sufficient ground is enough.
- The interpretation of Sections 202 and 204 CrPC, in light of the cited Supreme Court judgments, does not warrant interference with the Magistrate's order.
- The legislative intent of Section 202 CrPC (preventing malicious prosecution) is balanced against the nature of the offense and the petitioner's role.
- The scope of enquiry under Section 202 is limited, and the Magistrate's order cannot be faulted on that basis.

10.3. Allegations of violation of the mandate of section 25(1)(c) of the Payment and Settlement Systems Act, 2007 is misconceived and erroneous. The complaint has disclosed all the ingredients of the offence alleged and no interference as to the criminal proceeding initiated is warranted. That the averments as to the culpability of the petitioner as made in the FIR is sufficient for sending him for

trial for the vicarious liability of him as the Company Secretary of the accused company. That, the petitioner/accuse person has made endeavour to give limited interpretation to the penal provision as above of the Act of 2007, which is not permissible in the eye of law.

- The alleged non-compliance/violation of Section 25(1)(C) of the Payment and Settlement Systems Act, 2007 is erroneous and inapplicable.
- The Petitioner's complaint discloses all the ingredients of the complained offenses.
- No interference with the proceeding is called for.
- The Petitioner's contention that the notice issued under Section 25 of the Act is beyond the prescribed period is incorrect.
- The electronic fund transfer was dishonored with a remark "insufficient fund" on specific dates.
- The complainant received intimation of the dishonor via debit memo.
- A demand notice was issued after the dishonor.
- The argument that the notice was issued beyond the period of limitation is not supported by the facts.
- The Petitioner's reliance on certain judgments is factually distinguishable and not applicable.
- The Petitioner's post as Company Secretary does not automatically make them statutorily liable.

- The Petitioner's argument regarding vicarious liability is insufficient to warrant quashing the proceedings.

10.4. The contention of the petitioner, regarding absence of personal knowledge of the authorised representative of the complainant company, who has lodged the complaint before the Magistrate, about the transaction as alleged in the complaint, is contrary to record and cannot be considered as a ground for quashing of the instant proceeding.

- Absence of personal knowledge by the complainant's authorized representative is not a valid ground for quashing proceedings.
- This is a question of fact to be determined during trial, not at a pre-mature stage of quashing.
- A detailed fact-finding inquiry into the representative's knowledge is not permissible at this stage.
- The law allows for averments to be gathered from circumstances and how they are conveyed, not just explicit statements.
- The drafting skills of the person filing the complaint do not negate a substantive right.
- The key is whether the pleading conveys that the person filing is authorized and claims knowledge.

- Specific assertion of knowledge by a power-of-attorney holder does not require a particular manner of statement.
- It is sufficient to demonstrate that the complaint is filed in the name of the payee, and if a different person prosecutes, they are authorized and have knowledge.
- An authorized employee can represent a company complainant.
- Such averments and prima facie material are enough for a Magistrate to take cognizance.
- A company complainant's situation should be viewed from a different standpoint.
- The complaint, supporting affidavit, and affidavit in lieu of oral statement indicate that the company's authorized representative had personal knowledge of the transaction.
- This demonstrates that an authorized person, who witnessed the transaction and had knowledge, instituted the complaint on behalf of the company.
- This satisfies the requirements of Section 142 of the Negotiable Instruments Act, 1881.
- Any dispute regarding authorization or the complainant's knowledge should be raised and established during the trial.

- Entertaining a petition to quash cognizance on these grounds would be unjustified.

10.5. Also, that the contention of the complainant during argument had the effect of improvement of its case, than what has been narrated in the complaint itself, and by this way had the effect of amendment of the complaint itself, which substantially prejudices the petitioner, is only illusory, misconceived and remains unsubstantiated. The Complainant advanced a clarificatory argument, substantiated by unimpeachable information, to refute the petitioner's misinterpretation of the complaint.

- The petition of complaint contains the basic facts necessary to constitute an offense under Section 25 of the Payment and Settlement Systems Act, 2007. The minute details claimed by the Petitioner as mandatory are disputed questions of fact to be adjudicated during trial.
- The petition of complaint is not incongruous and all prior requirements for initiating a prosecution under Section 25 of the Payment and Settlement Systems Act have been lawfully and/or timely adhered to.
- No new circumstances were introduced; rather, minute details necessary for trial were presented to rebut the Petitioner's erroneous inference. This

contention is substantiated by government records of which judicial notice can be taken.

- The 5th and 6th of March 2015 were holidays due to 'Doljatra' and 'Holi', as notified in the official gazette. Therefore, the Complainant could not have received information of dishonor prior to March 7th, 2015. This is a fact of which judicial notice can be taken.
- The contention that the prosecution is not maintainable due to a default in sending a mandatory demand notice within the stipulated period has been dislodged by the Complainant's clarification.
- Circumventing the Complainant to refute the Petitioner's contention and present government records for judicial notice is against the principles of natural justice and the opportunity of hearing.
- Substantial justice should prevail over technical issues, as technicalities intended by the Petitioner would frustrate the legislative object.
- Conditions in the statute defining an offense should be interpreted in light of the statute's object to avoid frustration. Therefore, the argument of amendment to the complaint should not be considered, and clarificatory arguments are permissible and cannot be ignored on the touchstone of prejudice.

- The petition of complaint discloses necessary details of the offense for prima-facie satisfaction, and thus, no case for interference has been made out.
- Quashing a legitimate proceeding based on disputed facts or incomplete issues is legally invalid. It stifles a legitimate prosecution and causes prejudice and miscarriage of justice.
- The issue of prejudice is based on an improbable interpretation of the date of knowledge/receipt of information of dishonor and has no basis. Prejudice is a substantial question of fact to be demonstrated during trial.
- The judgments cited by the Petitioner are distinguishable:
- In **Sr Sukumar versus S. Sunaad Raghuram**, the Supreme Court allowed amendment to prevent multiplicity of proceedings. In the present case, the Complainant provided clarification, not new facts, to rebut arguments and prevent premature termination of proceedings. This clarification is not an amendment and is permissible.
- The reference to **J.T.H Zwart & Ors. versus Indrani Mukherjee** is misplaced. In that case, the complaint lacked basic ingredients of the offense. In the present case, all basic ingredients of the offense under Section

25 of the Payment and Settlement Systems Act are averred. Factual details intended by the Petitioner need not be incorporated in the complaint.

- The Learned Magistrate rightly recorded subjective satisfaction regarding the existence of facts constituting the offense at the stage of taking cognizance. A rare case warranting immediate inference by the Court has not been demonstrated. Allowing a proceeding to continue is the norm, and quashing it at a nascent stage is an exception permissible only in exceptional circumstances, which are not present here.

11. The following judgments have been relied on by Mr. Satadru Lahiri, learned advocate for the opposite party No. 2/complainant company -

i) K.K. Ahuja Vs. V.K. Vora and Anr. reported in **(2009) 10 SCC 48**

ii) In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881 reported in **(2021) 16 SCC 116**

iii) Econ Antri Limited Vs. Rom Industries Limited and Anr. reported in **(2014) 11 SCC 769**

iv) Munoth Investments Ltd. Vs. Puttukola Properties Ltd. and Anr. reported in **(2001) 6 SCC 582**

v) Rayapati Power Generation Pvt. Ltd. and Anr. Vs. Indian Renewable Energy Agency Ltd. (Ireda) reported in **2022 SCC OnLine Del 295**

vi) S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan reported in **2022 SCC OnLine SC 1238**

vii) Malwa Cotton and Spinning Mills Limited Vs. Virsa Singh Sidhu and Others reported in **(2008) 17 SCC 147**

- 12.** As regards the order of the Magistrate taking cognizance of offence and its legality and validity, this Court, even being fully conscious with the directions of the Court in the pronouncements as relied on by the petitioner/accused person No.7, finds that the said disputed order of the Magistrate does not appear only to be a cyclostyle and made mechanically, without application of mind. The Magistrate has endorsed by signing that the order has been dictated by him. In respect of a Court burdened with thousands of case dockets at the relevant point of time, it cannot be concluded that an intentional latches or violation of Rules has been committed by the Magistrate, in this regard. This Court is of considered opinion that for the only reason of the order of the Magistrate being typed out, would not be a clear implication of the fact of him not having applied mind before taking cognizance of offence. That it is not a sustainable proposition. On the contrary it is found that the Magistrate having endorsed that the order has been dictated by him, has taken cognizance of offence in accordance with

the settled legal principles. Allegation of non-application of mind by the Magistrate while taking cognizance of offence is thus not sustainable. In this regard the Court is constrained to hold further that in the case of ***Sharmistha Chowdhury (supra)***, the Court's verdict came against the factual finding therein regarding the practice of recording orders by different hands particularly with assistance of police personnel attached to the Court of the Magistrate. Evidently, the factual background on the basis of which the petitioner intends to raise the point of legality in the process of taking cognizance of offence by the Magistrate in this case, is dissimilar with that in the case of ***Sharmistha Chowdhury (supra)***. Hence, in the instant case the said or other judgments on similar proposition do not have any manner of application.

13. With reference to a Full Bench decision of the Apex Court in ***Re:Expeditious Trial of Cases under section 138 of the N.I.Act (supra)***, Mr. Sourav Chatterjee, learned Senior Counsel for the petitioner has argued that due to the reason of non-compliance of the mandatory provision under section 202 of the Code of Criminal Procedure by the Magistrate, the instant complaint case before the same is not eligible to be proceeded with and only liable to be dismissed. The following portion thereof has been relied on:

“24.2. Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.”

In this regard he also mentions and relies on a judgment of this Court in ***Sheetal Amit Patil (supra)***.

14. The contrary argument advanced by Mr. Satadru Lahiri on behalf of the opposite party is that it would be improper to say that the Magistrate has not done any enquiry in this case as provided under section 202 of the Code of Criminal Procedure. Rather an affidavit having been filed in Court consequent upon the complaint and that being duly considered by the Magistrate, would go on demonstrating that an enquiry as envisaged under section 202 of the CrPC has been conducted and such statutory mandate has been duly fulfilled.
15. So far as the mandatory nature of the provision as envisaged under section 202 of the CrPC is concerned, the same is now well settled and there can be no dilemma as regards the same. The proposition of law that an enquiry by the Magistrate or the designated person would be mandatory, in case a complaint is filed alleging against the complainant/s residing outside jurisdiction of the said Court of the Magistrate, is thus not in dispute in this case. Also is admitted the fact as transpires from the complaint itself that all the accused persons including the present petitioner, domicile outside the territorial jurisdiction of the Magistrate. After introduction of the amendments in the Code of Criminal Procedure vide the Amendment Act 2005, with effect from June 23, 2006, which has introduced section 202 in the

Code as a mandatory provision, compliance thereof has become imperative on the backdrop of the conditions as prescribed therein. The law has emphasized that prior to issuing process against an accused whose place of residence is outside the territorial jurisdiction of his Court, the Magistrate must either conduct an enquiry himself or direct an investigation to ensure that the complaint has a sufficient basis, primarily to prevent harassment through false complaint. The Supreme Court in case of ***Vijay Dhanuka vs Najima Mumtaj (reported at [(2014)14 SCC 638]*** has held as follows:

“11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was

sufficient ground for proceeding against the accused."

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

Similar view has been taken in the Supreme Court judgments in ***Abhjijit Pawar vs Hemanth Madhukar Nimbalkar and Anr*** [reported at (2017) 2 SCC 528] and ***Sunil Todi vs The State of Gujrat*** [reported at 2021 SCC Online SC 1174].

16. The purpose of amendment including the insertion of words "*and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction*" is to prevent harassment from false complaints against persons outside the jurisdiction. The Supreme Court has consistently held that the enquiry is not merely procedural but a mandatory safeguard to ensure the genuineness of the complaint before issuing process. An enquiry by the Magistrate under this provision of law involves examining the materials on record and application of his mind to the allegations and evidence, ensuring that there is prima facie case [as per judgment in ***Pepsi Foods Limited and***

Another vs Special Judicial Magistrate and Others reported in 1998 SCC (Cri) 1400 para-28]. The failure of the Magistrate to conduct this mandatory enquiry, especially when the accused resides outside the jurisdiction, renders the process illegal and liable to be quashed. The scope of enquiry has been succinctly laid down by the Supreme Court in ***Smt Nagawwa vs Veeranna Shivalingappa Konjalgi and Others*** reported at ***AIR 1976 SC 1947***, in the following words:

“the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited — limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint— (i) on the materials placed by the complainant before the court: (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.”

17. In this regard, it is pertinent to note the order dated August 31, 2015 of the Magistrate. The petitioner in this case has sought for setting aside of the said order too and ultimately, if the proceeding is not found to be maintainable and liable to be quashed, the said order shall also have to go. Be that as it may, for the limited purpose of examination as to whether the Magistrate has duly complied with the requirements which are mandatory under provision of section 202 of the CrPC, the order of the Magistrate as above be looked into.

18. An in-depth scrutiny of the order of the Magistrate dated August 31, 2015, reveals that he was not oblivious of the requirement of the mandatory compliance as per provision under section 202 of the Code. Hence, he records about due consideration by him of perusal of the complaint, the affidavit submitted and the documents filed by the complainant. He has recorded further that no witness is examined from the side of the complainant, excepting filing of the affidavit. Thus, the Magistrate has come to a conclusion that there is sufficient ground for proceeding against the accused persons for an offence under section 25 of the Payment and Settlements Act 2007 read with provisions under Chapter-XVII of the Negotiable Instruments Act. The question remains as to whether the same amounts to due compliance by the Magistrate with the mandates under section 202 of the Code or not. As discussed earlier, pursuant to the judicial pronouncements of the Apex Court, one can find that scope of enquiry under section 202 of the Code is limited – only to ascertainment of the truth or falsehood of the allegations made in the complaint, on the basis of the materials placed by the complainant before the Court and from the complainant's point of view only. The order as above reveals that the Magistrate has considered the complaint, the documents as well as the affidavit, which were available before him. For the limited purpose of an enquiry to be held under provision of section 202 of the Code, that too from the point of view of the complainant only, such consideration by the Magistrate and his finding on the basis of the same, appears to be just and proper. There is no serious dispute as to the fact that the Magistrate has

recorded wrongly in his order regarding examination of available materials before it, before issuance of process. Therefore, the Court is of considered opinion that the Magistrate has done appropriately by conducting an enquiry as to the existence of prima facie case against the petitioners, on the basis of materials available before him, at a pre-summon stage and by issuance of process there for. So far as compliance of the mandatory provision under section 202 of the Code of Criminal Procedure by the Magistrate is concerned, no sufficient material is available for interference by this Court. Therefore, to that extent, the petitioner's challenge is negated.

19. The discussions as above take us forward from the points agitated regarding procedural latches, to the merits of the case. The allegations are levelled against the petitioner under section 25 of the Payment and Settlement Systems Act, 2007, in his capacity as the company secretary of the accused No.1 company. To take the discussion further forward, it is necessary to look into the said legal provision, to find whether the ingredients thereof are prima facie present in the complaint and more particularly against the petitioner in his capacity of being such an employee of the accused company, to be vicariously liable for the offence allegedly committed by the same.

20. Section 25 of the Payment and Settlement Systems Act, 2007 is as follows:

“25. Dishonour of electronic funds transfer for insufficiency, etc., of funds in the account.—

(1) Where an electronic funds transfer initiated by a person from an account maintained by him cannot be executed on the ground that the amount of money standing to the credit of that account is insufficient to honour the transfer instruction or that it exceeds the amount arranged to be paid from that account by an agreement made with a bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the electronic funds transfer, or with both: Provided that nothing contained in this section shall apply unless—

(a) the electronic funds transfer was initiated for payment of any amount of money to another person for the discharge, in whole or in part, of any debt or other liability;

(b) the electronic funds transfer was initiated in accordance with the relevant procedural guidelines issued by the system provider;

(c) the beneficiary makes a demand for the payment of the said amount of money by giving a notice in writing to the person initiating the electronic funds transfer within thirty days of the receipt of information by him from the bank concerned regarding the dishonour of the electronic funds transfer; and

(d) the person initiating the electronic funds transfer fails to make the payment of the said money to the beneficiary within fifteen days of the receipt of the said notice.

(2) It shall be presumed, unless the contrary is proved, that the electronic funds transfer was initiated for the discharge, in whole or in part, of any debt or other liability.

(3) It shall not be a defence in a prosecution for an offence under sub-section (1) that the person, who initiated the electronic funds transfer through an instruction, authorisation, order or agreement, did not have reason to believe at the time of such instruction, authorisation, order or agreement that the credit of his account is insufficient to effect the electronic funds transfer.

(4) The Court shall, in respect of every proceeding under this section, on production of a communication from the bank denoting the dishonour of electronic funds transfer, presume the fact of dishonour of such electronic funds transfer, unless and until such fact is disproved.

(5) The provisions of Chapter XVII of the Negotiable Instruments Act, 1881 (26 of 1881) shall apply to the dishonour of electronic funds transfer to the extent the circumstances admit.

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability, as the case may be.”

21. Therefore, Section 25 of the Payment and Settlement Systems Act, 2007, criminalizes the dishonour of an electronic funds transfer. It primarily involves the dishonour of electronic funds transfer initiated through a payment system, coupled with the liability of the person responsible for initiating or facilitating such transfer, and the failure to comply with statutory obligations related to the dishonour. Necessary ingredients of the offence may be catagorised in the following manner:

- *Initiation of electronic funds transfer:* The transfer must have been initiated through a recognized payment system, such as electronic transfer, ECS, or TReDS, as seen in the context of the documents.
- *Dishonour of the transfer:* The transfer must have failed to be credited or settled, i.e., the bank or payment system did not honor the transfer, which could be due to insufficient funds, technical issues, or other reasons.
- *Notice of dishonour:* The payer or the bank must have issued or received a notice of dishonour. The compliance with statutory procedures for such notices is of utmost importance. Section 25(1)(c) is worth noting in this regard. A demand for payment of the said amount of money is to be raised by the beneficiary in case of alleged dishonour of transfer. The demand should be made by giving a notice in writing within thirty days of the receipt of information by him, from the bank concerned, regarding the dishonour of the electronic funds transfer.
- *Failure to make payment:* The person responsible must have failed to make the payment after receiving notice of dishonour, leading to criminal liability.

22. The issues which arise for consideration are therefore (i) Whether the demand notice issued is in compliance with the provisions under the

statute or not; (ii) Whether a prima facie case of vicarious liability is made out against the petitioners or not.

- 23.** With reference to the written complaint, Mr. Sourav Chatterjee, learned Senior advocate for the petitioner has submitted that from the averments therein, deviation from the mandatory statutory time limit for a notice is apparent. He further has submitted that the 30 days' notice period being a *sine qua non* for a complaint under the provisions of the Payment And Settlement Systems Act, 2007, that being mandatory and evidently having not been complied with in the instant case, the criminal proceeding initiated against his client is liable to be vitiated.
- 24.** According to the written complaint, the intimation of the dishonoured Electronic Funds Transfer came to the knowledge of the complainant vide an intimation being transaction bearing Nos. 1023196413 and 1032925358, vide debit memo dated March 5, 2015 issued by the clearing agent of the complainant company. A demand notice is said to have been posted on April 6, 2015 though being marked as dated March 26, 2015. The complainant has stated in the written complaint that the notice as above, which was sent to the accused No. 1 that is the company on its correct address the acknowledgment due card or the unserved enveloped has never returned back. According to the petitioner, the demand notice being issued/posted on April 6, 2015, is

evidently beyond a period of 30 days from the date of knowledge of the complainant.

25. On behalf of the complainant, Mr. Satadru Lahiri, learned advocate has submitted that the petitioner's contention regarding issuance of notice under provision of Section 25 of the Act of 2007, being not within the purview of the statutory prescription, is only incorrect. Mr. Lahiri has argued that the two national holidays intervened during the period and excluding those, the notice served by the complainant, can be found to be within the prescribed period. However, according to the petitioner, the complainant's attempt to exclude holidays (Doljatra and Holi) to bring the notice within the prescribed period is only misconceived and erroneous computation. Mr. Sourav Chatterjee for the petitioner has suggested that even if the holidays are excluded a proper calculation would show the notice to have been issued beyond the 30 days limit. He has also argued that there is no provision for condonation of delay in issuing demand notice. Hence the entire proceedings are liable to be quashed, he says.

26. Having considered the averment made in the written complaint and the relevant dates as mentioned therein, it appears that, vide a debit memo dated March 5, 2015, the complainant has come to know about dishonor of Electronic Funds Transfer. Therefore, in accordance with the law, a period of 30 days starting from March 5, 2015 would be the legally acceptable period for service of notice demanding payment of

money by the complainant to the petitioner if at all, as per law. Admittedly, though the demand notice is dated March 26, 2015, the same was posted one day after the period of 30 days was over that is, on April 6, 2015. Hence, the same is beyond the period prescribed statutorily, for service of a notice by the complainant. The argument of the holidays having intervened in between resulting into such delay is not acceptable for two reasons; firstly, that in case of an Electronic Fund Transfer information which is received virtually for which the holidays in between, if any, bear no relevance; secondly, there is no justifiable explanation or at least anything advanced on behalf of the complainant as to why a demand notice dated March 26, 2015 should be posted on April 6, 2015. In that case the date of posting of the letter is only to be taken consideration.

- 27.** For the reasons as stated above, the Court is constrained to find that the mandatory statutory provision under Section 25 of the Act of 2007 regarding compulsory service of notice by the complainant within a period of 30 days from the date of knowledge is not fulfilled in the instant case. In such circumstances, the Court is further constrained to find that the Magistrate has not taken into consideration this aspect of the matter while taking cognizance of the offence and passing further orders in the case. As the Court is required to consider if the ingredients of offence as alleged against the petitioner are prima facie available in the written complaint or not, which are discussed above, the Court is further constrained to find that the necessary ingredient of

compulsory service of notice within the statutory time limit is not complied with by the complainant, in the instant case.

28. Thereafter, comes the question if the prima facie ingredients are available against the petitioner to invoke vicarious liability of him for the alleged offence committed by the company in which he has been in employment as a company secretary. For that the complainant has to plead that at the relevant point of time the accused petitioner has been at the helm of the day to day affairs and policies of the company and was responsible for the decision which tantamounts to an offence as alleged. After thorough scrutiny of the complaint itself, the Court is constrained to find that excepting the name of the petitioner having been mentioned as one of the accused persons in the said complaint, his involvement or any role in commission of the alleged offence or regarding his day to day involvement in the affairs of the accused company has not been expressed therein, except that the accused company is being managed and controlled by the other accused persons Nos. 2 to 7 (No. 7 being the present petitioner).

29. The Court is constrained to find that in accordance with the settled principles of law, bare mention of the fact that the petitioner was liable for management and control of the accused company without any specification as regards his role therein, would not suffice for him to be incorporated as an accused person and sent for trial. It does not mean that there should have been an exhaustive description as to how the

petitioner has worked for the company but prima facie material elaborating his role in commission of the offence would have been imperative for the petitioner to be impleaded as an accused person in the written complaint.

30. Therefore, the Court is unable to find any ingredient of offence against the petitioner in his capacity as an employee of the accused company and his being liable vicariously for the offence, if any, committed by the said accused company. Unfortunately, this aspect has also been overlooked by the Magistrate while taking cognizance of the offence alleged against the present petitioner in the case.

31. The reasons as discussed above, renders the criminal proceeding being No. CS/0025782/2015 now pending before the Metropolitan Magistrate, 14th Court, Kolkata under Section 25 of the Payment and Settlement Systems Act, 2007 liable to be quashed. Hence, the instant application under Section 482 of the Code of Criminal Procedure, 1973 should succeed.

32. Hence, **CRR 2292 of 2016** is allowed with the following direction:-

- Proceeding in the criminal case No. CS/0025782/2015 now pending before the Metropolitan Magistrate, 14th Court, Kolkata under Section 25 of the Payment and Settlement Systems Act, 2007 is quashed and set aside, against the accused person No. 7 therein, that is the present petitioner.

- Orders passed by the Metropolitan Magistrate, 14th Court, Kolkata in CS 0025782 of 2015, as regards the present petitioner are set aside.

33. Urgent certified copies of the judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)