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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1756-2025 (O&M)
Date of decision: 15.01.2025

M/s Satya Kesari and another

... Petitioners

Vs.

Dainik Bhaskar, having its office at Panipat

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jagdish Manchanda, Advocate,
Mr. Nischal Manchanda, Advocate,
Mr. Saksham Kaushik, Advocate,
Mr. Yogit Mehta, Advocate,
Mr. Divyansh, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] seeking quashing of complaint bearing NACT No.4209 of 2023 dated 18.12.2023 titled as '*Dainik Bhaskar Vs. M/s Satya Kesari and another*' filed under Sections 138/142 of the Negotiable Instruments Act, 1881 (for short 'NI Act')

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(Annexure P-1) as well as summoning order dated 19.01.2024 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Panipat and all the subsequent proceedings arising therefrom.

2. Briefly, the facts, as alleged by the respondent-complainant, are that it is publishing and circulating daily newspaper under the name and style of Dainik Bhaskar from Panipat (Haryana) and Mohinder Sharma is Recovery Manager of the same and as per resolution dated 12.05.2014, he is duly authorized to file, sign and contest the complaint (*supra*). It is alleged that the petitioners executed an agreement/contract dated 01.03.2021 with the respondent regarding production/publication of his daily newspaper namely Satya Kesari and as per the aforesaid agreement/contract, the respondent printed newspaper from 01.04.2020 till 10.05.2021. The respondent asked for the payment from the month of April, 2021 for clearing the due amount of Rs.1.50 lacs and on the request of the petitioners for concession/discount, it was settled that the petitioners will pay Rs.1.10 lacs. Thereafter, in order to discharge his liabilities, the petitioners issued a part-payment cheque bearing No.187416 dated 10.10.2023 for Rs.11,000/- of Punjab National Bank, Sadar Bazar, Karnal. When the said cheque was presented by the respondent for clearance with its banker IDBI Bank, GT Road, Panipat, the same was dishonoured with the remarks “*payment stopped by the drawer*” vide memo dated 03.10.2023. When the respondent informed the petitioners about the

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same and demanded the cheque amount, they turned down its request. Thereafter, a legal notice dated 23.10.2023 (Annexure P-7) was served by the respondent upon the petitioners through its counsel, demanding the cheque amount, to which the petitioners sent a false and fabricated reply and alleged that the legal notice was just to grab the money. When the petitioners failed to pay the cheque amount to the respondent, the complaint (*supra*) was instituted.

3. Learned counsel for the petitioners, *inter alia*, contends that vide agreement dated 01.04.2023 (Annexure P-3), the respondent agreed for publishing, marketing and distribution of flyers, brochures and advertising promotional material of the petitioners through its distribution network and it was mentioned in the said agreement that it will automatically terminated on 31.03.2024. However, no work has been allotted to the petitioners and the cheques, which were given in security, were presented by the respondent. It is further contended that earlier an agreement dated 01.03.2021 (Annexure P-4) was executed between the petitioners and the respondent, which was from 01.03.2021 to 28.02.2022. However, on 27.04.2021, Karambir Singh, an authorized person of the respondent-firm stated that management of the respondent-company stopped printing job on the basis of credit, as per terms and conditions of the agreement dated 01.03.2021 (Annexure P-4) and further printing job for the petitioners would be done on advance payment basis and stopped printing job before the expiry of the said agreement. As such, the

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respondent, by concealing the agreement dated 01.04.2023 (Annexure P-3), has manipulated the earlier agreement dated 01.03.2021 (Annexure P-4).

3. Learned counsel for the petitioners further contends that the petitioners, in order to avoid any monetary loss, stopped the payment of cheques given in security, as there was an apprehension that after the breach of said agreement, the respondent would misuse the security cheques. The petitioners sent a legal notice dated 21.04.2023 (Annexure P-5) to the respondent not to misuse the post-dated cheques given in security. The respondent replied the said legal notice (Annexure P-5) by stating that an amount of Rs.1.10 lacs for the month of April, 2021 is due to be paid by the petitioners, as discernible from Annexure P-6. However, the cheques in question were given as per agreement dated 01.04.2023. When the cheques in question were presented by the respondent to recover the amount of Rs.1.10 lacs, the same were dishonoured with the remarks 'Payment Stopped by Drawer' vide memo dated 13.06.2023 of IDBI Bank. Thereafter, the respondent served a legal notice dated 23.10.2023 (Annexure P-7) upon the petitioners by demanding the amount of Rs.1.10 lacs and the petitioners sent a false and fabricated reply on 28.06.2023 (Annexure P-8), alleging that the legal notice was just to grab money. After that, the petitioners filed a complaint dated 01.07.2023 (Annexure P-9/T) against aforesaid the authorized persons of the respondent-company, with a request to take legal action against them for

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committing the offence of cheating and for blackmailing. It is thus contended that the complaint (*supra*) (Annexure P-1) as well as the summoning order dated 19.01.2024 (Annexure P-2) are liable to be quashed.

4. Having heard learned counsel for the petitioners and after perusing the record of the case, it transpires that the drill of Section 202 of Cr.P.C. (*now Section 225 of BNSS*) was not followed before issuance of process.

5. A study of Section 202 of Cr.P.C. (*now Section 225 of BNSS*) is called for, which is reproduced below:

Section 225. Postponement of issue of process.—

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 212, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 223.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he

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shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Sanhita on an officer in charge of a police station except the power to arrest without warrant.”

6. Time and again, the constitutional Courts have reiterated that the drill of Section 202 of Cr.P.C. (now Section 225 of BNSS) is mandatory in nature. A two Judges Bench of the Hon'ble Supreme Court in ***Abhijit Pawar Vs. Hemant Madhukar, 2017(3) SCC 528***, speaking through Justice A.K. Sikri, has held as follows:

“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

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necessary orders as are permissible in law, after following the procedure contained in Section 202, Cr.P.C.”

7. Reliance in this regard can also be placed on the judgments rendered by the Hon’ble Supreme Court in ***National Bank of Oman Vs. Barakara Abdul Aziz and another, 2013(2) SCC 488*** and by this Court in ***Dr. Jasminder Kaur Vs. Raj Karan Singh Boparai, CRM-M-20260-2008***.

8. This issue has also been dealt with by the Constitution Bench of the Hon’ble Supreme Court ***In re: Expeditious Trial of Cases under Section 138 of NI Act 1881*** in ***Suo Moto Writ Peition (Crl.) No.2 of 2020*** and analysed the said issue and concluded as follows:

*“10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See: ***Vijay Dhanuka & Ors. v. Najima Mamtaj & Ors, Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr. and Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors.***). There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the*

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jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

*11. The learned Amici Curiae referred to a judgment of this Court in **K.S. Joseph v. Philips Carbon Black Ltd & Anr.** where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in **Vijay Dhanuka (supra)**, **Abhijit Pawar (supra)** and **Birla Corporation (supra)**, the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.” (emphasis added)*

9. Furthermore, the following directions were issued in ***In re:***

Expeditious Trial of Cases under Section 138 of NI Act 1881 (supra):

“24. The upshot of the above discussion leads us to the following conclusions:

1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

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.

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3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.

5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

6) Judgments of this Court in Adalat Prasad (supra) and Subramaniam Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

7) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.

8) All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other

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issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.”(emphasis added)

10. The intention behind Section 202 of Cr.P.C. (*now Section 225 of BNSS*) is to ensure that sufficient grounds exist in order to proceed against an accused in a private complaint. As such, it is pertinent that the concerned Court passes an order indicating substantial compliance of the aforementioned provision, in view of the directions issued in ***In re: Expeditious Trial of Cases under Section 138 NI Act 1881 (supra)***. Learned jurisdictional Court shall pass an order satisfying the objective standard of reasons and justice and record its satisfaction under Section 202 of Cr.P.C. (*now Section 225 of BNSS*) that sufficient grounds exist against the accused. However, the formation of the opinion in this regard can be based upon the documents available on record and the evidence of the witnesses for the complainant can be taken by way of an affidavit.

11. Accordingly, in view of the dictum in ***In re: Expeditious Trial of Cases under Section 138 of NI Act 1881 (supra)*** and the order dated 13.01.2025 passed by this Court in ***CRM-M-1164-2025 (Subham Valia @ Shubham Walia Vs. Sarthak Blenders & Bottlers Pvt. Ltd. and others)***, present petition is disposed of and the impugned summoning order dated 19.01.2024 (Annexure P-2) passed by learned Judicial Magistrate 1st Class,

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Panipat, is hereby set aside. The matter is remanded back to concerned Court to consider the matter afresh, in accordance with law, by taking recourse to Section 202 of Cr.P.C. (*now Section 225 of BNSS*).

[HARPREET SINGH BRAR]
JUDGE

15.01.2025
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No