



203 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-5463-2018 (O&M)
Date of Decision: 13.01.2025

ASHISH MEHRA

...Petitioner

V/S

SVARN TEX PRINTS PVT. LTD.

...Respondent

CRM-M-5493-2018 (O&M)
Date of Decision: 13.01.2025

ASHISH MEHRA

...Petitioner

V/S

SVARN TEX PRINTS PVT. LTD.

...Respondent

CRM-M-5502-2018 (O&M)
Date of Decision: 13.01.2025

ASHISH MEHRA

...Petitioner

V/S

SVARN TEX PRINTS PVT. LTD.

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Bhumika Sachan, Advocate for
Mr. Shivam Grover, Advocate for the petitioner(s).

HARPREET SINGH BRAR J. (Oral)

1. These petitions have been filed under Section 482 of Cr.P.C. seeking quashing of summoning order dated 08.09.2017 passed by learned Judicial Magistrate Ist Class, Faridabad, Haryana in '*M/s Svarn Tex Prints Pvt. Ltd. Vs. M/s Zynke Exports Pvt. Ltd. And Ors.*' bearing NACT Nos. 4393 of 2017, 4389 of 2017 and 4392 of 2017 all cases instituted on 08.09.2017 under Section 138 of Negotiable Instruments Act.
2. All the aforementioned matters are decided by this common order as similar nature of prayer has been made in all the three cases. However, facts are taken from CRM-M-5463-2018.

CRM-M-5463-2018 (O&M)

3. The present complaints have been filed by the complainant(s) against the accused-petitioner with the averments that the petitioner in discharge of his existing liability towards the complainant issued cheques Nos. 692613, 692624, 692620, 692618 and 692619. The complainant presented the above said cheques for collection but same were dishonoured with remarks "Insufficient Funds". A legal notice was sent to the petitioner but despite the legal notice, the accused-petitioner did not honour the cheques amount and hence, the present complaints have been filed.

4. Learned counsel for the petitioner *inter alia* contends that learned trial Court has failed to appreciate the fact that the complaint(s) as filed by the respondent were bereft of specific averments qua the role and manner of involvement of petitioner in dishonour of the cheques in question. Learned counsel further contends that complainant(s)/respondent(s) ought to have made specific averments qua the manner of involvement and role of the petitioner(s) in dishonour of cheques and complainant(s) cannot now improve his case as it is a trite law that any material improvements made before the Court, in order to make the statement/evidence acceptable, cannot be relied upon by the learned trial Court. Learned counsel further contends that petitioner has not signed the cheques in question and these are purported to be the cause of action for the complaint in question and as such no liability can be attached to him.

5. Having heard the learned counsel for the petitioner(s) and after perusing the record of the case, it transpires that the drill of Section 225 BNSS (erstwhile Section 202 Cr.P.C.) was not followed before issuance of process. Hence, the following question props up for the consideration of

this Court-

“Is the drill of Section 225 BNSS mandatory to be followed in cases pertaining to Section 138 of the Negotiable Instruments Act, 1881?”

6. A study of Section 225 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 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.

7. Time and again, the constitutional courts have reiterated that the drill of Section 202 Cr.P.C. (now Section 225 BNSS) is mandatory in nature. A two Judge bench of 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 necessary orders as are permissible in law, after following the procedure contained in Section 202, Cr.P.C.”

Reliance in this regard can also be placed on the judgment rendered by the Hon’ble Supreme Court in ***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.

8. However, a Co-ordinate bench of this Court in ***Guljari Lal vs. Kotak Mahindra Bank*** 2023(1) R.C.R.(Criminal) 651 has held that the inquiry under Section 202 Cr.P.C. (now Section 225 BNSS) can be dispensed with in cases pertaining to Section 138 NI Act. It was further elaborated that it is not necessary for the Magistrate to examine witnesses and satisfaction can be formed on the basis of documents available on the record. Learned Co-ordinate Bench has read the word ‘shall’ in the said provision to be directory and not mandatory in th’s regard.

9. This issue has also been dealt with a Constitution bench of the Hon’ble Supreme Court ***In re: Expeditious Trial of Cases under Section***

138 NI Act 1881 in *Suo Moto Writ Peition (Crl.) No.2 of 2020*, 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 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)

10. Furthermore, the following directions were issued in ***In re: Expeditious Trial of Cases under Section 138 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.

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

11. The intention behind Section 202 Cr.P.C. (now Section 225 BNSS) is to ensure that sufficient grounds exist in order to proceed against an accused-petitioner 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.***

12. In view of the discussion above, the present petitions are allowed and summoning order dated 08.09.2017 passed by learned Judicial Magistrate Ist Class, Faridabad are set aside. The matter is remanded back to concerned Court to consider the matter afresh in accordance with law, by taking recourse to Section 225 BNSS.

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

(HARPREET SINGH BRAR)
JUDGE

13.01.2025
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>