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

\+ CRL.M.C. 608/2024 & CRL.M.A. 2493/2024 STAY

BAIBHAB DAS .....Petitioner

Through: Mr. Mohit Yadav, Mr. Vikas & Mr. Sumit Saundal, Advocates

versus

SUTANU BANERJEE .....Respondent

Through: Mr. Rajeev Mishra, Advocate

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% 31.07.2025

1. This is a petition under Section 482 CR.P.C., filed on behalf of the petitioner in Ct. Case 1652/2019 under Sections 420/465/467/468 IPC registered at P.S. Kishangarh, Delhi for the quashing of the impugned order dated 11.01.2023 passed by the court of Ld. MM-02 Patiala House Courts, New Delhi titled "Sutanu Banerjee vs. Baibhab Das" whereby the court issued summons to petitioner under sections 420/465/467/468 IPC.

2. Petitioner, who was appointed as software engineer at Prakriti Inbound Pvt. Ltd. in Beijing, China is accused of siphoning off more than Rs. 5.5. crores by creating false invoices by forging signatures and thereby cheating the complainant/respondent no. 2 of his money by collecting 100% payment from Chinese clients on basis of false/forged documents. Subsequently, on 10.05.2018, petitioner was terminated from his services.

3. On the basis of discovery via detailed inquiry and forged invoices, a criminal complaint was filed in court, in which, petitioner has been

summoned under sections 420/465/467/468 IPC vide order dated 11.01.2023.

4. Learned counsel for the petitioner submits that the trial court did not provide any detailed reason for summoning. He further submits that despite the allegation of siphoning of more than Rs. 5.5. crores no single evidence proving the same was placed on record.

5. Learned Counsel for the petitioner/accused while referring to Para 16 of the complaint, submits that no evidence in respect of the said allegations has been placed on record till date, so much so, even the names of the clients have not been mentioned, from whom the money was allegedly taken/siphoned.

6. However, learned counsel for the Respondent No. 2 submits that he has annexed the relevant invoices and documents along with the complaint, and vide undertaking dated 11.09.2019, petitioner admitted that due to his act of omission the company suffered financial loss amounting to more than Rs. 5.5 Crores and undertook to pay an amount of Rs. 2 crores within a period of 2 years in 24 instalments starting from 15.10.2018.

7. Ld. Counsel for Respondent No. 2/Complainant states that there are several other forged invoices and their validity/genuineness is a matter of trial.

8. After hearing the rival submissions of both the parties and perusing the documents placed on record the court is of the opinion that, the allegations in the present case pertain to siphoning off company’s money amounting to Rs. 5.5. Crores approx.

9. A perusal of the impugned order reveals that the learned trial court placed reliance on the Memorandum of Undertaking signed by the accused

admitting his liability with promise to pay the amount. The learned trial court was of the view that in the deposition of the complainant, there are allegations against the proposed accused of creating false invoices by forging signatures and thereby cheating the complainant of his money by collecting 100% payment from Chinese clients on the basis of false/forged documents.

10. The Court has carefully gone through the statement of the complainant recorded at the stage of pre-summoning evidence before the trial court. The statement merely contains verbal allegations of forgery of the invoices. However, no such invoice has been tendered in evidence in the statement of the complainant to prima facie demonstrate that such invoices were forged documents for the purpose of siphoning off the money of the company. The Internal Committee Report has also not been tendered in evidence. Since the evidence is mostly documentary in nature, verbal statement of the complainant that petitioner siphoned off Rs. 5.5 crores, belonging to the company by forging the invoices, is not sufficient. Siphoning off the money and admitting omission leading to financial losses are two different aspects, inasmuch as, the first may result in criminal action, while the second may just create a civil liability. Thus, reliance on the undertaking of the petitioner admitting that his acts/omissions resulted in loss of Rs. 5.5 crores to the company may not be sufficient.

11. The Court is conscious that at pre-summoning stage, the evidence is not subjected to cross examination and the Court has to take only a prima facie view based upon the material and the statements of the witnesses but then such evidence must of the nature and character which should enable the Court to satisfy itself that there are sufficient grounds to proceed against the

accused. The Hon’ble Apex Court in ***Rekha Sharad Ushir* vs. *Saptashrungi Mahila Nagari Sahkari Patsansta Ltd. 2025 INSC 39***, emphasised upon the role of Magistrate to carefully consider the complaint, documents, and witnesses before issuing process under Section 204. The relevant extract from the said judgement are:

> *“10. In Recording the complainant's statement on oath under Section 200 of the CrPC is not an empty formality. The object of recording the complainant's statement and witnesses, if any, is to ascertain the truth. The learned Magistrate is duty-bound to put questions to the complainant to elicit the truth. The examination is necessary to enable the Court to satisfy itself whether there are sufficient grounds to proceed against the accused. After considering the complaint, the documents produced along with the complaint, and the statements of the complainant and witnesses, if any, the learned Magistrate has to apply his mind to ascertain whether there is sufficient ground for proceeding against the accused. If he is satisfied that there is sufficient ground to proceed against the accused, then the learned Magistrate has to issue a process in terms of sub-Section (1) of Section 204 of the CrPC. The corresponding provision under the BNSS is Section 227. Setting criminal law in motion is a serious matter. The accused faces serious consequences in the sense that he has to defend himself in the trial.*
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> *21. While filing a complaint under Section 200 of CrPC and recording his statement on oath in support of the complaint, as the complainant suppresses material facts and documents, he cannot be allowed to set criminal law in motion based on the complaint. Setting criminal law in motion by suppressing material facts and documents is nothing but an abuse of the process of law.”*

12. The cognizance involves application of mind to the given facts to ascertain whether the Accused needs to be summoned. The purpose of recording statements prior to taking cognizance, is only to ascertain if any prima facie case is disclosed in the Complaint and thereby enable taking of cognizance in appropriate cases and avoid unnecessary harassment of the accused.

13. In ***Birla Corporation Ltd.*** **vs.** ***Adventz Investments and Holdings*** (Criminal appeal No. 875, 876, 877 of 2019), the Supreme Court observed and held in respect of Section 202 Cr.P.C. as follows:-

> *"25. Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 Cr.P.C. The purpose of the enquiry under Section 202 Cr.P.C. is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused.*
> *26. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 CrPC or whether the complaint should be dismissed by resorting to Section 203 CrPC on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.*
> *27. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 Cr.P.C. or whether the complaint should be dismissed by resorting to Section 203 Cr.P.C. on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 Cr.P.C., the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused."*

14. Further in ***National Bank of Oman v. Barakara Abdul Aziz and Another*** (2013) 2 SCC 488, the Supreme Court explained the scope of enquiry and held as under:-

"9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of 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."

15. In the absence of Internal Committee Report and the alleged forged invoices having been tendered in evidence, this Court finds no sufficient material to come to a prima facie conclusion that accused has siphoned off the money. That being so, the impugned order dated 11.01.2023, passed by the learned Metropolitan Magistrate, summoning the petitioner under Section 420/465/467/468 IPC, is set aside.

16. Since respondent claims to be in possession of the forged invoices and the internal audit report, the same have been filed with the complaint, interest of justice would be served in case the respondent is granted another opportunity to lead pre-summoning evidence to enable him to tender the same for pre-summoning evidence. Hence, under these circumstances, while setting aside the impugned order dated 11.01.2023, the matter is remitted back to the trial court with liberty to respondent to lead additional pre-summoning evidence for the said limited purpose. However, it is clarified

that if such an evidence is led, the trial court shall consider the same independently on its own merits.

17. Petition is disposed of in terms of the aforesaid order.

RAVINDER DUDEJA, J.

JULY 31, 2025/sk