GAHC010202772022

2026:GAU-AS:14888

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1012/2022

DHRUBAJYOTI DEKA AND 4 ORS.
S/O SRI KHAGENDRA NATH DEKA
R/O HATSINGIMARI COLLEGE NAGAR,
P.O. HATSINGIMARI
DIST. SOUTH SALMARA MANKACHAR, ASSAM

2: SRI KHAGENDRA NATH DEKA
R/O SINGRAPARA
P.O. BENNABARI
P.S. MUSHALPUR
DIST. BAKSA
ASSAM

3: SMT. SURADEVI DEKA
W/O SRI KHAGENDRA NATH DEKA
R/O SINGRAPARA
P.O. BENNABARI
P.S. MUSHALPUR
DIST. BAKSA
ASSAM

4: SRI MINTU DAS
S/O SRI GAJEN DAS
R/O QTR NO. 3
1ST FLOOR
MUSHALPUR

P.S. MUSHALPUR
DIST. BAKSA
ASSAM

5: SMTI. DIPAMONI DEKA
W/O SRI MANTU DAS
D/O SRI KHAGENDRA NATH DEKA

R/O QTR N. NO. 3
1ST FLOOR

MUSHALPUR
P.S. MUSHALPUR
DIST. BAKSA
ASSA

VERSUS

SUSMITA BARMAN
D/O SRI BIJEN BARMAN
W/O DHRUBAJYOTI DEKA
R/O CHAMTA, P.O. WEST CHAMTA
P.S. BELSOR, DIST. NALBARI, ASSAM
PIN-781306

Advocate for the Petitioner : MR. S BORA, MS J RAJKUMARI

Advocate for the Respondent : MR. R PHUKAN, MR. N D BHUYAN,MR. S DUSAD,MR. P D BHUYAN,MR. A. M. SIDDIQUE,MR. P TALUKDAR

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 05-10-2026

Heard Mr. S Bora, the learned counsel for the petitioners. Also heard Ms. L Banik appearing on behalf of Mr. P D Bhuyan, the learned counsel for the respondent.

2. This is an application u/s 482 CrPC read with Section 401 CrPC for quashing of the entire criminal proceeding being registered as CR Case No. 82/2022 u/s 403/406 IPC pending before the Court of learned JMFC, Nalbari.

3. Mr. Bora, the learned counsel for the petitioners basically raised the issue

that while taking cognizance in the present case the learned Court below has violated the provision of Article 202 of CrPC. He submitted that from the complaint itself as well as the statement made by the complainant or oath before the Magistrate it reveals that the accused no. 1 is the resident of Baksa district and the accused no. 4 who is a Teacher by profession is a resident of Mankachar. Thus, it is evident that the petitioners are not from the district of Nalbari wherein a case has been instituted by the respondent/complainant. He basically emphasised on provision of 202 CrPC wherein the enquiry u/s 202 is mandatorily required when the accused/persons belong to a different district. But, here in the instant case it is very evident from the record itself that though initially the case was fixed for recording of statement of the witnesses u/s 202 CrPC but, on the very next date the learned Magistrate took cognizance of the case u/s 403 and 406 of the IPC without even recording the other witnesses, in spite of the fact that the petitioners belong to different district from where the case was instituted. To substantiate the plea, Mr. Bora also relied on a decision of the Apex Court reported in **(2014) 14 SCC 638 [Vijay Dhanuka and Others v. Najima Mamtaj And Others]** and emphasized on paragraphs 10, 11 & 12 of the said judgment. In the para 12 of the said judgment it has been held by the Apex Court that the expression of the word 'shall' has to be considered in the background of the case as well as the purpose of the amendment and thus it is a mandatory provision. Paragraphs 11 & 12 of the said judgment read as under:-

> "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" was inserted by Section 19 of Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23rd of June, 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.

4. Citing the above referred judgment it is submitted by Mr. Bora that without complying the provision of 202 CrPC cognizance has been taken by the learned Trial Court below and hence the entire proceeding may be set aside and quashed due to such irregularity, which is in violation of Section 202 Cr.PC.

5. Ms. Banik, the learned counsel appearing for the respondent submitted in this regard that the learned Trial Court below did not commit any such irregularity while taking cognizance against the present petitioners. She further submitted that on 27.06.2022 the statement of the complainant/respondent was recorded and thereafter the case was fixed for further enquiry u/s 202 CrPC. But, on the next date i.e. on 29.07.2022 the learned Court below had recorded the reasons for its satisfaction and passed the order accordingly

stating that there is a prima facie case against the present petitioners and accordingly the cognizance was taken.

6. Relying on para 14 of the same judgment as referred above it is submitted by Ms. Banik that the purpose of enquiry u/s 202 Cr.PC is only for the satisfaction of the Court as to whether there is sufficient ground for proceeding the case further. Para 14 of the said judgment read as under:-

> "14. It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process."

7. But, here in the instant case as seen from the order, the learned Trial Court below had expressed its satisfaction and hence the postponement of process is dispensed with and the cognizance was accordingly taken only after examining the respondent/complainant u/s 200 CrPC. She further submitted that it is a case of *streedhan* wherein the respondent/complainant had prayed for return of her *streedhan* and hence considering the nature of the case also there may be satisfaction for the Magistrate even after recording the statement of the respondent/complainant. She further submitted that for non-recording of the witnesses u/s 202 CrPC or for such irregularity, the entire criminal proceeding cannot be set aside and quashed without any justifiable reason or ground. She accordingly prayed for dismissal of the present petition and submitted that there is no need of any interference for the order passed by the learned Trial Court below taking cognizance in the present case.

8. Hearing the submissions made by leaned counsels for both sides it is seen

that the present petition for quashing is filed challenging the order of taking cognizance by the learned Magistrate wherein the order was passed without making any enquiry u/s 202 CrPC. Thus, it is the case of the petitioners that cognizance has been taken and process is issued against the present petitioners by violating the provision of 202 CrPC wherein enquiry u/s 202 is mandatorily required in a case where the respondent/accused is the resident beyond the jurisdiction of trying Magistrate.

9. On the other hand, it is the case of the respondent/complainant that after recording her statement u/s 200 CrPC, the case was fixed for further enquiry u/s 202 CrPC. But, the learned Court below was satisfied with the statement made in the complaint as well as by the complainant/respondent and thus finding a prima facie case the cognizance was taken which cannot be considered as illegal or irregular for not complying with the provision of 202 Cr.PC. It is basically the contention of the respondent that the cognizance was taken finding a prima facie case against the accused/petitioners and hence the enquiry u/s 202 CrPC is not mandatory in such a position.

10. It is an admitted position that after recording the statement of the complainant/respondent u/s 200 CrPC the case was fixed for enquiry u/s 202 CrPC. But, the learned Trial Court below had expressed his satisfaction with the complaint as well as the statement of the complainant and accordingly finding a prima facie case it is observed that enquiry u/s 202 may not be required and process is issued accordingly. In the judgment which is relied by both the parties, the Apex Court had observed that the expression 'shall' prima facie makes an inquiry or the investigation, as the case may be, by the Magistrate mandatory and the word 'shall' is ordinarily mandatory but sometimes it can be held as a directory and the use of word 'shall' in all circumstances is not

decisive.

11. From para 12 of the above referred judgment it is seen that as per the note of amendment, the amendment of sub section 1 of section 202 may obligatory upon the Magistrate before summoning the accused residing beyond his jurisdiction only for the innocent persons not to harass by unscrupulous persons who resides far of places and complaint is lodged only to harass those persons. But, here in the instant case it is seen that the case is filed basically for *streedhan* property of the complainant/respondent and the petitioners/accused-persons are her husband and relatives and thus it is not a case that a case is instituted against some persons who resides far of places rather it is the case filed by the complainant/respondent against her husband and family members. So considering the nature of case also it is seen that there may be prima facie satisfaction for the learned Magistrate to take cognizance against the accused/petitioners who are basically the husband and the relatives of the husband.

12. More so, for the above referred judgment as relied by the learned counsel for the respondent in para 14 it has been observed by the Apex Court that – "*In the inquiry envisaged under section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.*"

13. In the instant case also it is seen that after examining the complainant and perusing the complaint the learned Trial Court below had arrived to the satisfaction that there are sufficient materials to take cognizance and

accordingly he did not find it necessary to conduct further enquiry u/s 202 CrPC and cognizance is accordingly taken against the petitioners/accused-persons. It is also seen that initially the case was fixed for further enquiry u/s 202 CrPC but, on the subsequent day after perusal of the record the Court had expressed the satisfaction and accordingly finding a prima facie case the cognizance is taken against all the petitioners/accused-persons. More so at the time of issuing process or taking cognizance the Magistrate is only to be prima facie satisfied whether there is sufficient ground for proceeding against the accused. The detailed discussion of merits or demerits of the case is not required at the time of issuing process. In para 15 of the judgment of the Apex Court in case of **Delhi Race Club (1940) Limited and Others. Vs. State of Uttar Pradesh and Another**, reported in **(2024) 10 SCC 690**, it has been held as under:-

> "15. Further it is also well settled that at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its inherent jurisdiction which is to be sparingly used. The scope of the inquiry under Section 202 of the CrPC is extremely 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."

14. So considering detailed discussion made above, vis-à-vis the nature of the case it is seen that the learned Trial Court below had passed the order of cognizance only being satisfied that there is a prima facie case against the accused/petitioners and hence considering all these aspects of the case, this Court is of the opinion that it is not at all a fit case to quash the entire proceeding of C.R. Case No. 82/2022 u/s 403/406 IPC pending before the Court of learned JMFC, Nalbari by invoking power u/s 482 CrPC corresponding to

Section 528 BNSS at this stage.

15. The criminal petition accordingly stands disposed of.

JUDGE

Comparing Assistant