

Pramod Jajoo @APPELLANT@Hash Punam Jajoo

Court: Calcutta High Court

Date of Decision: Oct. 4, 2018

Acts Referred: Code of Criminal Procedure, 1973 " Section 202, 202(1), 482
Indian Penal Code, 1860 " Section 403, 406

Hon'ble Judges: Asha Arora, J

Bench: Single Bench

Advocate: Mohini Majumder, M. Sinha

Final Decision: Disposed Off

Judgement

Asha Arora, J.

By an application under section 482 of the Code of Criminal Procedure, petitioner has approached this Court for quashing of the proceedings of

complaint case No. C/415823 of 2014 under section 403/406 IPC pending before the learned Metropolitan Magistrate 19th Court Calcutta on threefold

grounds. Firstly, it has been contended in the aforesaid application that the averments made in the petition of complaint do not disclose the ingredients

of the offences alleged against the petitioner. Secondly, the trial Court has no jurisdiction to try the case since the alleged cause of action arose in

Rajasthan which is beyond the territorial jurisdiction of the learned Magistrate. The third ground relates to non-compliance of the mandatory provisions

of sub-section (1) of section 202 Cr.P.C. by the learned Magistrate.

At the time of hearing, Mr. Bhattacharya, learned counsel appearing for the petitioner addressed this Court only on the point of non-compliance of the

mandatory requirements of section 202 Cr.P.C.. It is argued that according to the petition of complaint the accused/petitioner is a resident of

Rajasthan which is beyond the territorial jurisdiction of the learned Magistrate. By the impugned order dated 16/2/2015 process was issued against the

petitioner without the mandatory inquiry as contemplated under section 202(1) Cr.P.C.. Referring to the order impugned learned counsel for the

petitioner sought to impress that there was no postponement of issuance of process as mandated under section 202 Cr.P.C. for the purpose of

deciding whether or not there was sufficient ground for proceeding against the accused/petitioner. Placing reliance upon the case of S.S. Binu versus

State of West Bengal and another reported in 2018 CRILJ 3769 learned counsel for the petitioner canvassed that as process was issued against the

petitioner without an inquiry under section 202 Cr.P.C., the matter should be remitted to the learned Magistrate for complying with the aforesaid

provisions. In this context the relevant paragraph 69 of the judgment has been referred which reads as follows:

“69. It has already been settled that when an order of issuing summon is issued by a learned Magistrate against an accused who is residing at a

place beyond the area in which he exercises his jurisdiction without conducting an enquiry under Section 202 Cr.P.C., the matter is required to be

remitted to the learned Magistrate concerned for passing fresh orders uninfluenced by the prima facie conclusion reached by the appellate Court.

Reference may be made to the decision of National Bank of Oman (supra) and the relevant portion of the above decision is quoted below:

12. All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions

of Section 202 Cr.P.C. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached by

the High Court that the bare allegations of cheating do not make out a case against the accused for issuance of process under Section 418 or 420 IPC.

The CJM will pass fresh orders after complying with the procedure laid down in Section 202 Cr.P.C., within two months from the date of receipt of

this order.”

Referring to the orders dated 30/1/2015, 9/2/2015 and 16/2/2015 passed by the learned Magistrate, learned counsel for the opposite party countered

that it is evident from the said orders that after examination of the complainant on oath there was postponement of issuance of process as mandated

under section 202(1) Cr.P.C.. It is pointed out that on the adjourned date that is, on 16/2/2015 another witness was examined on solemn affirmation

and only thereafter the learned Magistrate directed issuance of process. There is therefore due compliance of section 202 Cr.P.C.. To buttress his

submission learned counsel for the opposite party relied upon Vijay Dhanuka and others versus Najima Mamta and others reported in (2014)14

Supreme Court Cases 638. Learned counsel for the opposite party particularly referred to paragraphs 3 and 14 of the judgement. The relevant

paragraph 3 of the judgement reads as follows:

“3. The aforesaid complaint was filed on 1-10-2011 in the Court of the Additional Chief Judicial Magistrate, Jangipur, Murshidabad. The learned

Magistrate took cognizance of the offence and transferred the case to the court of another Magistrate for inquiry and disposal. On receipt of the

record, the transferee Magistrate adjourned the case to 31-10-2011.

On the said date, the complainant and her witnesses were present. The complainant was examined on solemn affirmation and the two witnesses,

namely, Enamul Haque and Masud Ali were also examined. The order dated 31-10-2011 shows that they were examined under Section 200 of the

Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"). The transferee Magistrate, thereafter, adjourned the case for orders

and on the adjourned date i.e. 15-11-2011, he directed for issuance of summons against the accused persons for offence under Sections 323, 380 and

506 read with Section 34 IPC. It is relevant here to state that in the complaint, the residence of the accused has been shown at a place beyond the

territorial jurisdiction of the Magistrate.

Since no other points have been canvassed at the time of hearing, the only issue which falls for determination is whether there has been an inquiry as

contemplated under section 202 Cr.P.C. before issuance of process against the accused/ petitioner. In this context it will be beneficial to quote the

relevant orders passed in complaint case No. C/415823 of 2014 which are as follows:

"30/1/2015 Complainant is present. Complainant is examined in part and deferred on the prayer of complainant. To 5/2/2015 for further S/A."

"5/2/2015 Ld P.O. is on leave. Complainant is present.

Case is adjourned.

To 9/2/2015 for S/A."

"9/2/2015 Complainant is present.

She is examined u/s 200 Cr.P.C.

To 13/2/2015 for F. S/A"

"13/2/2015 Ld P.O is on leave.

Complainant is present.

Case is adjourned.

To 16/2/2015 for F. S/A"

"16/2/2015 Complainant is present and he was examined on dock u/s- 200 Cr.P.C. Another witness is also present and is also examined on S/A.

Perused the deposition of both the witnesses, petition of complaint and other documents. There is sufficient ground to proceed against the accused

person u/s 403/406 I.P.C. Issue process against all the accused persons u/s 403/406 I.P.C. accordingly. To 18.3.15 for SR and Appearance Requisite

at once."

The above quoted order dated 9/2/2015 shows that after the complainant was examined on solemn affirmation under section 200 Cr.P.C. the case

was adjourned for further. In *S/A. In Vijay Dhanuka's* case (supra) the Supreme Court held that under section 200 Cr.P.C. examination of the

complainant only is necessary with the option of examining the witnesses present, if any, whereas under section 202 Cr.P.C. the witnesses are

examined for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused. The relevant paragraph 14 of the

said judgement reads as follows:

"14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before

issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the

Code, the same reads as follows:

"2. (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court."

It is evident from the aforesaid provision that every inquiry other than a trial conducted by the Magistrate or the 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."

It is clear that in the case at hand, after examination of the complainant on solemn affirmation the case was adjourned for examining another witness.

On the deferred date (on 16/2/2015), the witness present was examined on solemn affirmation. After considering the evidence of the complainant and

the aforesaid witness as well as upon perusal of the petition of complaint the Magistrate issued process on being satisfied that there is sufficient

ground for proceeding against the accused. By adjourning the case for further evidence there was, in my view, postponement of issuance of process

for an inquiry within the meaning of section 202 Cr.P.C.. The order impugned cannot be faulted merely on the ground that section 202 Cr.P.C. has not

been spelt out therein. As stated hereinabove, in the case at hand, the Magistrate examined the complainant on solemn affirmation under section 200

Cr.P.C. and on the deferred date one witness was examined on oath and only thereafter issuance of process was directed. In the circumstances, it

cannot be said that the mandate of section 202 Cr.P.C. has not been complied. There is therefore no merit in the argument advanced on the behalf of

the petitioner.

For the reasons aforestated, I do not find any illegality or irregularity in the order impugned. Consequently the application being CRR 1945 of 2015 is

dismissed. The connected applications being CRAN 1339 of 2018 and CRAN 1004 of 2018 are accordingly disposed of. No order as to cost. Urgent

photostat certified copy of this order if applied for, be supplied to the applicant upon compliance of requisite formalities.

(Asha Arora, J.)

Later:-

Learned counsel for the petitioner submits that since he has not addressed this Court on the other two points, the said points may be left open. In the

circumstances, the aforesaid points not addressed by the learned counsel for the parties are kept open.