

A.F.R.

Court No. - 85

Case :- APPLICATION U/S 482 No. - 1230 of 2022

Applicant :- Smt. Geeta And 4 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ayank Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

Heard Mr. Ayank Mishra, learned counsel for the applicants, Mr. Pankaj Srivastava, learned A.G.A for the State and perused the material available on record.

As legal submission have been raised by counsel for the applicant challenging the summoning order passed by the concerned Magistrate, hence, the present application is being decided without issuing notice to opposite party no.2

The present application under Section 482 Cr.P.C. has been filed by the applicants to quash the summoning order dated 15.09.2021 passed by Additional Chief Judicial Magistrate/Additional Civil Judge (Sr. Div.) Court No.2, Ghaziabad in Criminal Complaint Case No. 11006 of 2020 (Smt. Jyoti Vainiwal Vs. Deepak Kumar Tomar and others), under Section 406 I.P.C., Police Station-Kotwali, District-Ghaziabad, pending in the Court of Additional Chief Judicial Magistrate/Additional Civil Judge (Sr. Div.) Court No.2, Ghaziabad.

Brief facts of the case are that, the present complaint has been filed by opposite party no.2 on 22.07.2020 with the allegations that marriage of opposite party no.2 was solemnized with applicant no.5 on 14.05.2019 according to Hindu Rites and Rituals wherein sufficient dowry including money and ornaments were given by the parents of opposite party no.2.

It has been further alleged that opposite party no.2 was not permitted to meet her parents and was mentally and physically harassed by the applicants for reasons best known to them. It is further alleged that all the demands of the applicants' side were fulfilled by the family of opposite party no.2 as and when raised by them, after the marriage of opposite party no.2 with applicant no.5. On 26.12.2019 when the father of opposite party no.2 came to meet her, the applicants misbehaved with him and the opposite party no.2 was sent back to her parents house along with her father on the same day. When the opposite party no.2 came to know that applicants are not interested in calling her back, she requested them to return her Stree Dhan. A notice in this regard was sent by the opposite party no.2 which was neither replied by the applicants nor the Stree Dhan was returned, hence, the present complaint was filed in which the applicants have been summoned vide order dated 15.09.2020 without following the mandatory requirement as provided under Section 202 Cr.P.C., which has been challenged before this Hon'ble Court.

Learned counsel for the applicants submits that though the address of the applicants as mentioned in the complaint is Bengaluru, hence they are residents of Bengaluru but the concerned Magistrate sitting at Ghaziabad has summoned the applicants ignoring and not complying the provision of Section 202 Cr.P.C., 1973. He further submits that procedure stipulated in the said provision is mandatory which imposes an obligation on the Magistrate to ensure that before summoning an accused, who resides beyond his jurisdiction, the Magistrate shall make necessary inquiries 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 is sufficient ground to proceed against the accused.

It is undisputed that the applicants are residing at Bengaluru, which is beyond the jurisdictions of the concerned Magistrate sitting at Ghaziabad, hence the concerned Magistrate was duty bound to follow the procedure as prescribed under Section 202(1) Cr.P.C. amended in the year 2006. In support of his submission counsel for the applicants has placed reliance

upon the judgement of this Court in case of **Sayed Sibte Haider Vs. Mohammad Askari Ali & Anr.**, passed in Criminal Misc. Application Under Section 482/378/407 Cr.P.C. 115 of 2018, vide order dated 28.02.2019.

Learned A.G.A. for the State submits that in case, this Court is satisfied that the mandatory requirement of Section 202 Cr.P.C. is not fulfilled by learned Magistrate before issuing the process, this Court can direct the Magistrate to do so.

As the counsel for the applicant while challenging the summoning order has turned upon Section 202 Cr.P.C., hence the following is extracted below:

“202. 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 192, may, if he thinks fit, 1 [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.”

As per the provision of Section 202 Cr.P.C. as amended with effect from 23.06.2006, the requirement is that in those cases where the accused is residing at a place beyond the area in which the concerned Magistrate exercises his jurisdiction, it is mandatory on the part of Magistrate to conduct an enquiry or investigation before issuing the process. That means, in case, if such an enquiry is not conducted in cases where the accused resides at a place beyond the area in which the Magistrate exercises his jurisdiction, the purpose of amendment in Section 202 Cr.P.C. would frustrate.

The essence of purpose of amendment has been captured by this Court in case of **Vijay Dhanuka v. Najima Mamtaj**, reported in (2014) 14 SCC 638:

"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" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. 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) 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 (2014) 14 SCC 638 find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints."

As per provisions of Section 202(1) Cr.P.C. the enquiry or investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the concerned Magistrate, which has been held in the case of **Abhijir Pawar v. Hemant Madhukar Nimbalkar and another**, (2017) 2 SCC 528. The relevant para of the aforesaid judgement is as under:-

"Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 Cr.P.C. was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-6-2006 by adding the words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction?". There is a vital purpose or objective

behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment."

Similar view has been taken in the Supreme Court judgement in the case of **Sunil Todi vs. The State of Gujarat**, reported in **2021 SCC Online SC 1174**, wherein enquiry by the concerned Magistrate is mandatory, in case, where the accused is residing at a place beyond the area of its jurisdiction prior to issuance of process.

In view of the above, the impugned order is not sustainable in the eyes of law and is liable to be quashed.

Accordingly, the application u/s 482 Cr.P.C. is **allowed**.

The impugned order dated 15.09.2021 is hereby quashed. Matter is remanded back to the Court below for the further proceeding, in accordance with law, specially in view of the provisions of Section 202(1) Cr.P.C. as discussed above.

The concerned Magistrate may pass appropriate orders, in accordance with law, after giving proper opportunity of hearing to both the parties.

Order Date :- 4.2.2022

Rahul.