

**2023 LiveLaw (SC) 597 : 2023 INSC 670**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
ABHAY S. OKA; J., SANJAY KAROL; J.  
CRIMINAL APPEAL NO. 561 OF 2012; 26 July, 2023  
DILIP KUMAR *versus* BRAJRAJ SHRIVASTAVA & ANR.**

**Code of Criminal Procedure, 1973; Section 202(1), 203 - After taking recourse to Section 202(1) of the Cr.P.C., before dismissing a complaint by taking recourse to Section 203 of the Cr.P.C., the Magistrate has to consider the statements of the complainant and his witnesses. (Para 5)**

*For Appellant(s) Mr. Sunil Kumar, Sr. Adv. Mr. A.K. Thakur, Adv. Mr. Rishi Raj, Adv. Mr. Sujeet Kumar, Adv. Mr. M. Dutta, Adv. Mr. Vijay Kumar, Adv. Mr. Shekhar Kumar, AOR*

*For Respondent(s) Mr. Sudhanshu S. Chaudhary, Adv. Mr. Nikhil Majithia, Adv. Mr. Abhinav, Adv. Mr. Jaydeep, Adv. Mr. P. Soma Sundaram, AOR Mr. Akshay C. Shrivastava, Adv. Mr. Abhinav Mukerji, AOR*

**J U D G M E N T**

**ABHAY S. OKA, J.**

1. A complaint under Section 200 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') was filed by the first respondent showing the appellant as an accused and alleging offences punishable under Sections 323, 342, 500, 504, 506, 295-A, 298, 427 of the Indian Penal Code, 1860. Considering the limited controversy involved in this appeal, we are not adverting to the allegations made in the complaint.

2. On 22<sup>nd</sup> August, 2008, the learned Magistrate passed an order directing holding of an inquiry under sub-Section (1) of Section 202 of the Cr.P.C. The order indicates that the learned Magistrate intended to himself hold an inquiry. Thereafter, the learned Magistrate recorded the statement of only the first respondent/complainant and passed an order dated 18<sup>th</sup> September, 2008, dismissing the complaint under Section 203 of the Cr.P.C. By the impugned order, the High Court has interfered with the said order on a limited ground. The High Court was of the view that there was no proper inquiry made by the learned Magistrate in terms of sub-Section (1) of Section 202 of the Cr.P.C and therefore, the High Court remitted the complaint to the learned Magistrate from the stage of holding an inquiry under sub-Section (1) of Section 202 of the Cr.P.C.

1 The learned Senior Counsel appearing for the appellant submitted that it was not mandatory for the learned Magistrate to record statements of other witnesses. He submitted that after considering the statement of the first respondent-complainant and the averments made in the complaint and other material on record, the learned Magistrate rightly came to the conclusion that the allegations in the complaint were *mala fide*. He placed reliance on the decision of this Court in the case of **Mohinder Singh vs. Gunwant Singh and Ors.**<sup>1</sup>. He relied upon what is held by this Court in paragraph 11 thereof. He also pressed into service another decision of this Court in the case of **Nagawwa Vs Veeranna Shivalingappa Konjalgi**<sup>2</sup>.

4. We have carefully perused the order dated 18<sup>th</sup> September, 2008 passed by the learned Magistrate and earlier order of 22<sup>nd</sup> August, 2008. Under sub-Section (1) of Section 202 of the Cr.P.C., the learned Magistrate has a discretion either to inquire into the case himself, or to direct a Police Officer to investigate and submit a report. In this

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<sup>1</sup> (1992) 2 SCC 213

<sup>2</sup> (1976) 3 SCC 736

case, he took recourse to the first option. A perusal of the complaint shows that eight witnesses were specifically named in the complaint. The learned Magistrate did not examine any of them. In the order dated 18<sup>th</sup> September, 2008, the learned Magistrate has not recorded reasons for not recording the statements of other witnesses specifically cited in the complaint. The law is well settled, which is found to have been reiterated in the decision in the case of **Mohinder Singh** (supra). After taking recourse to sub-Section (1) of Section 202 of the Cr.P.C., before dismissing a complaint by taking recourse to Section 203 of the Cr.P.C., the learned Magistrate has to consider the statements of the complainant and his witnesses. In this case, the learned Magistrate has not examined the other witnesses. The view taken by this Court in the case of **Nagawwa** (supra) is no different.

5. Therefore, we find no error when the High Court came to the conclusion that the complaint deserves to be remanded from the stage of holding an inquiry under sub-Section (1) of Section 202 of the Cr.P.C.

6. The High Court has made certain observations including on the issue of absence of sanction under Section 197 of the Cr.P.C.. As the High Court has remanded the case for holding an inquiry in terms of sub-Section (1) of Section 202 of the Cr.P.C., it is obvious that the observations made in the impugned order, including the observations on requirement of sanction under Section 197 of the Cr.P.C., will have to be held as tentative observations, which will have no bearing on ultimate conclusion to be drawn by the learned Magistrate.

7. Subject to what is observed above, no case for interference is made out. The appeal is, accordingly, dismissed.

8. Pending application(s), if any, shall stand disposed of.

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