

[2023 LiveLaw \(SC\) 702](#)

IN THE SUPREME COURT OF INDIA

**ABHAY S. OKA; J., PANKAJ MITHAL; J.**

Special Leave to Appeal (Crl.) No(s). 2135/2022; 22-08-2023

**ODI JERANG versus NABAJYOTI BARUAH & ORS.**

**Code of Criminal Procedure, 1973; Section 202(1) - In a case where one of the accused is a resident of a place outside the jurisdiction of the learned Magistrate, following the procedure under Section 202(1) is mandatory. (Para 4)**

(Arising out of impugned final judgment and order dated 14-02-2020 in CRLP No. 57/2019 passed by the Gauhati High Court at Itanagar)

For Petitioner(s) Ms. Preeti Gupta, AOR

For Respondent(s) Mr. Parthiv K. Goswami, Sr. Adv. Mr. Rahul Pratap, AOR Ms. Atiga Singh, Adv. Mr. Abhimanyu Tewari, AOR Ms. Eliza Bar, Adv.

**ORDER**

Heard the learned counsel appearing for the petitioner.

2. The petitioner is the complainant in a complaint filed under Section 200 of the Code of Criminal Procedure, 1973 (for short "CRPC") alleging offences punishable under Sections 120-B, 406, 420 read with Section 34 of the Indian Penal Code. The learned Magistrate on 2<sup>nd</sup> May, 2017 issued summons after examining the petitioner under Section 200 of CRPC. Thereafter, the case made progress and evidence of 7 witnesses was recorded before framing of charge. At that stage, the respondents-accused raised an objection on the ground that though some of the accused were residing at a place beyond the area covered by the jurisdiction of the learned Magistrate, the mandatory requirement of Section 202(1) of CRPC was not followed. On that ground, the order issuing summons was challenged by the respondents by invoking Section 482 of the CRPC before the High Court. The High Court relied upon a decision of this Court in the case of **Abhijit Pawar v. Hemant Madhukar Nimbalkar & Anr.**<sup>1</sup> As the mandatory requirement of subsection 1 of Section 202 of the CRPC was not followed, the High Court proceeded to quash the order issuing summons and remanded the complaint to the learned Magistrate to deal with the same from the stage of Section 202 of the CRPC.

3. The submission of the learned counsel appearing for the petitioner/complainant is that it was too late in the day that the objection regarding non-compliance with subsection 1 of Section 202 of the CRPC was raised and that also after 7 witnesses were examined by the petitioner. Her contention is that a substantial compliance with sub-section 1 of Section 202 of the CRPC has been made by examining the petitioner before issuing summons. She has placed reliance on a decision of this Court in the case of **Vijay Dhanuka & Ors. v. Najima Mamtaj**<sup>2</sup>. Her submission is that the objection ought not to have been entertained at such a belated stage.

4. There cannot be any doubt that in view of the use of word "shall" in sub-section 1 of Section 202 of the CRPC and the object of amendment made by the Act No. 25 of 2005, the provision will have to be held as mandatory in a case where the accused is residing at a place outside the jurisdiction of the learned Magistrate. In fact, in paragraph No.12 of the aforesaid decision relied upon by the learned counsel appearing for the petitioner, this Court held that in a case where one of the accused is a resident of a place outside the

<sup>1</sup> (2017) 3 SCC 538

<sup>2</sup> (2014) 14 SCC 638

jurisdiction of the learned Magistrate, following the procedure under subsection 1 of Section 202 of the CRPC is mandatory. In the case of *Vijay Dhanuka*<sup>2</sup>, this Court found that before issuing summons, the learned Magistrate had examined the complainant and two other witnesses on oath and therefore, on facts, this Court found that a substantial compliance with sub-section 1 of Section 202 of the CRPC was made.

5. In this case, even substantial compliance has not been made by the learned Magistrate. It is true that evidence was recorded before charge and at that stage, an objection was raised by the respondents. Considering the mandatory nature of subsection 1 of Section 202 of the CRPC, in the facts of this case, non-compliance thereof will result into failure of justice. Hence, we find no error in the impugned order of remand passed by the High Court. Accordingly, the Special Leave Petition is dismissed.

6. We are sure that considering the fact that complaint is of the year 2017, the learned Magistrate will give necessary priority to the disposal of the case.

7. Pending application, if any, also stands disposed of.

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