IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 03.12.2020

1. CRM-M-30800-2019

Sanjay Singh

..... Petitioner

V/s.

Bikram Singh Majithia

..... Respondent

2. CRM-M-42786-2019

Sanjay Singh

..... Petitioner

V/s.

Bikram Singh Majithia

..... Respondent

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Himmat Singh Shergill and Mr Ferry Sofat,
Advocates, for the petitioner.

Mr. R.K.Handoo and Mr. D.S.Sobti,
Advocates, for the respondent.

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Sanjay Kumar, J.:

Parties being common and issues inter-linked, these two petitions filed under Section 482 Cr.P.C. are amenable to conjoined disposal.

The petitioner in both these cases is one Sanjay Singh. He was a member of the Political Affairs Committee of Aam Admi Party and was in charge of its affairs in the State of Punjab at the relevant point of time. The respondent in these cases is one Bikram Singh Majithia. He was a member of the Punjab Legislative Assembly and was serving as the Revenue Minister of the State of Punjab at that point of time.

Complaint No. 69 dated 07.01.2016 was filed by the respondent under Section 499 IPC read with Sections 500, 501, 502 and 120-B IPC. Therein, he alleged that on 05.09.2015, the petitioner, being Accused No.1, had made scurrilous and defamatory statements against him at a rally at Moga in the State of Punjab, which were published in the Hindustan Times newspaper on 06.09.2015 by Accused Nos. 2, 3 and 4, the Editor, the Editor-in-Chief and a Reporter of the said newspaper. Again, on 27.12.2015, at a public rally at Fatehgarh Sahib in the State of Punjab, the petitioner made similar statements about him and they were published in newspapers on 28.12.2015. The import of these statements was that he was involved in drug trafficking.

The complaint was filed by the respondent on 12.01.2016. On that day, he examined himself as CW-1. He also examined three other witnesses. Thereupon, the learned Judicial Magistrate First Class, Ludhiana, closed his preliminary evidence under Section 200 Cr.P.C. and adjourned the matter for arguments on summoning. Ten days later, on 22.01.2016, the learned Magistrate examined the preliminary evidence, noted the arguments advanced on behalf of the complainant and issued summons to all the accused to face trial. It appears that Accused Nos. 2, 3 and 4 thereafter apologized to the respondent and the complaint was dismissed as withdrawn insofar as they were concerned. In consequence, the petitioner alone remained as the accused in this complaint case.

While so, the petitioner was elected as a Member of the Parliament (Rajya Sabha) on behalf of the Aam Admi Party from NCT Delhi on 07.01.2018. Even before this development, he filed an application before the learned Magistrate at Ludhiana under Section 205 Cr.P.C., seeking exemption from appearance in the subject complaint case. However, by order dated 03.05.2017, the learned Magistrate dismissed the said application. After his election to the Rajya Sabha, the petitioner again moved an application under Section 205 Cr.P.C. seeking exemption from personal appearance in the case. By order dated 19.12.2018, the learned Magistrate dismissed this application also.

This being the factual background, the petitioner filed CRM-M-30800-2019 assailing the order dated 19.12.2018 passed by the learned Magistrate dismissing his exemption application under Section 205 Cr.P.C. Thereafter, he filed CRM-M-42786-2019 with a prayer to quash Complaint No. 69 dated 07.01.2016 pending on the file of the learned Magistrate at Ludhiana. He also challenged the summoning order dated 22.01.2016 passed therein.

By order dated 22.07.2019 passed in CRM-M-30800-2019, this Court noted the contention advanced on behalf of the petitioner that, on 18.07.2019, the learned Magistrate had declined the application filed by the petitioner seeking exemption from personal appearance but the order was still unavailable, and directed that no coercive methods should be adopted against the petitioner.

By order dated 04.10.2019 passed in CRM-M-42786-2019, this Court took note of the contention of the petitioner that the learned Magistrate at Ludhiana had not followed the provisions of Section 202 Cr.P.C. while summoning him and directed that the proceedings before the trial Court should remain stayed.

In his reply filed in CRM-M-30800-2019, the respondent stated that the petitioner had made a misstatement before this Court that his application for exemption had been declined by the learned Magistrate on 18.07.2019. He asserted that the petitioner was unconditionally granted exemption on that day. He pointed out that the learned Magistrate had recorded in the order dated 19.12.2018 that the petitioner was physically present before the Court only on 6 occasions, of which one was on the day he surrendered and was enlarged on bail and the other was on the day when the notice of accusations was served upon him. He pointed out that apart from these two dates, the petitioner came before the Court only 4 times and had filed exemption applications approximately 59 times during the last 4 years. He pointed out that the petitioner had not attended 90% of the hearings in the complaint case and asserted that merely because he was a Rajya Sabha MP, it did not entitle him to any special privilege.

Long before the filing of the above reply on 08.02.2020, the petitioner moved an application on 25.07.2019 in CRM-M-30800-2019 seeking modification of the order dated 22.07.2019 passed by this Court. Therein, he stated that during the course of arguments, it had been

averred that the complaint case was listed on 18.07.2019 and the learned Magistrate had directed the counsel for the petitioner in open Court for appearance of the petitioner on the next date, failing which the exemption application would not be allowed. However, the said application was allowed on the same date, *viz*., 18.07.2019, but the order was not uploaded till the hearing of CRM-M-30800-2019 by this Court and in consequence, this Court passed the order on 22.07.2019, observing that the application for exemption from appearance was declined on 18.07.2019, which was factually incorrect. He accordingly prayed for modification of the order dated 22.07.2019 passed in CRM-M-30800-2019, to that extent.

In his reply in CRM-M-42786-2019, the respondent stated that the trial in the complaint case had reached an advanced stage as most of the prosecution witnesses had been cross-examined. He asserted that, only to delay the trial proceedings, the present petition seeking quashing of the complaint had been filed. He further stated that the learned Magistrate had complied with the requirements of Section 202 Cr.P.C.

Insofar as CRM-M-30800-2019 is concerned, perusal of the impugned order dated 19.12.2018 passed by the learned Magistrate reflects that the exemption application filed by the petitioner under Section 205 Cr.P.C. was considered at length and thereupon, the learned Magistrate opined that the petitioner was not entitled to seek blanket exemption from appearing in the case.

Significantly, the only ground cited by the petitioner as a changed circumstance since the dismissal of his earlier application, *vide* order dated 03.05.2017, was that he had become a Member of the Rajya Sabha. The learned Magistrate considered this aspect also and noted that the petitioner had only appeared 6 times, in all, before the Court since the filing of the complaint case and held that no legal right vested in him to seek exemption from personal appearance only on the ground that he had become a Member of the Parliament. The learned Magistrate further observed that the petitioner was always at liberty to seek exemption from personal appearance whenever the Rajya Sabha was in session, subject to furnishing proof of his attendance.

As pointed out by the respondent, it appears that the petitioner misled this Court on 22.07.2019 to the effect that no exemption had been granted on 18.07.2019 upon the application filed by him, though it was actually otherwise. No doubt, the petitioner filed an application immediately thereafter seeking modification of the order but that was after he secured interim relief on the strength of his factual misstatement. This conduct on his part cannot be countenanced as the learned counsel appearing for him before the learned Magistrate at Ludhiana would have been well aware of the outcome of the exemption application on that day itself, even if the order had not been uploaded or was not available.

That apart, the facts speak for themselves and it is manifestly clear from the record that the learned Magistrate at Ludhiana was utmost liberal while dealing with the individual exemption applications filed by the petitioner. So much so, the learned Magistrate granted liberty to the petitioner to seek exemption every time the Rajya Sabha was in session.

In any event, the petitioner cannot, as a matter of course or as a matter of right, seek exemption from appearance under Section 205 Cr.P.C. as it would essentially be within the discretion of the learned Magistrate to decide as to whether such relief should be granted to an accused in a particular case. No grounds have been made out for this Court to infer that the learned Judge erred in exercise of such judicial discretion while dismissing the application filed by the petitioner. This petition is therefore devoid of merit.

CRM-M-42786-2019 was filed by the petitioner to quash the subject complaint case and the summoning order passed therein. The grounds urged therein were threefold – a) on the merits of the matter; b) on the issue of jurisdiction of the learned Magistrate at Ludhiana to entertain the complaint; and c) on the ground that the provisions of Section 202 Cr.P.C. were not complied with. However, during the course of the hearing, Mr. Himmat Singh Shergill, learned counsel, did not advance any arguments either on the merits of the matter or on the issue of jurisdiction. Learned counsel restricted his arguments only to the issue

of compliance with Section 202 Cr.P.C. The grounds raised in the petition but discarded and left unaddressed during arguments are accordingly eschewed from consideration.

It would be appropriate at this stage to take note of the statutory scheme relevant to the issue of compliance with Section 202 Cr.P.C. Section 190 Cr.P.C. states to the effect that a Magistrate may also take cognizance of an offence upon receiving a complaint of facts which constitute such offence. Chapter XV of the Code of Criminal Procedure, 1973, deals with such complaints to Magistrates. Section 200 therein deals with examination of the complainant and states that a Magistrate, taking cognizance of an offence on complaint, shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. Section 202 Cr.P.C. deals with postponement of issue of process. Section 202 (1) Cr.P.C. reads thus:

> 'Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, [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:
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> Provided that .....'

It may be noted that the words in brackets: 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' were inserted in this provision by Central Amendment Act No. 25 of 2005, with effect from. 23.06.2006.

Sub-section (2) of Section 202 Cr.P.C. states that in an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath. Section 203 Cr.P.C. deals with dismissal of a complaint and states that if, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202 Cr.P.C., the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing. Section 204 Cr.P.C. in Chapter XVI deals with issue of process and states that if in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue his summons for the attendance of the accused, or if the case appears to be a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear before him on a certain date.

In the present case, the petitioner, now the sole accused in the complaint case, was admittedly a resident of New Delhi at that point of time and was therefore residing beyond the area of jurisdiction of the learned Magistrate at Ludhiana. In consequence, the provisions of Section 202 Cr.P.C. had to be compulsorily complied with. The issue to

be addressed is whether the learned Magistrate complied with the mandate of this provision before passing the summoning order.

It would be apposite at this stage to take note of precedential law on the issue.

In **M/s Pepsi Foods Ltd. and another vs. Special Judicial Magistrate and others [(1998) 5 SCC 749]**, the Supreme Court held that summoning of an accused in a criminal case is a serious matter and that criminal law cannot be set in motion as a matter of course. The Supreme Court observed that it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have criminal law set in motion and that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Court observed that he has to examine the nature of allegations made in the complaint and the evidence, both oral and documentary, in support thereof and would that be sufficient for the complainant to succeed in bringing the charge home to the accused. It was further observed that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning of the accused and he has to carefully scrutinize the evidence brought on record and may even put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations and then examine if any offence is *prima facie* committed by all or any of the accused.

Notably, after amendment of Section 202 Cr.P.C., w.e.f.

23.06.2006, it is mandatory for the Magistrate concerned to conduct an inquiry or cause an investigation before issuing process if the accused resides beyond his area of jurisdiction. [See **K.T. Joseph vs. State of Kerala and another{(2009) 15 SCC 199}** and **Udai Shankar Awasthi vs. State of Uttar Pradesh and another {(2013) 2 SCC 435}**].

In **Vijay Dhanuka and others vs. Najima Mamtaj and others [(2014) 14 SCC 638]**, the Supreme Court affirmed that the amended provisions of Section 202 Cr.P.C. made it mandatory to postpone the issue of process where the accused resided in an area beyond the territorial jurisdiction of the Magistrate concerned, till the Magistrate inquired into the case himself or directed investigation to be made by a police officer, or by such other person as he thought fit, for the purpose of finding out whether or not there was sufficient ground for proceeding against the accused. The Supreme Court then considered the nature of the inquiry that is mandated by Section 202 Cr.P.C. Reference was made to Section 2(g) Cr.P.C. which defined 'inquiry' to mean every inquiry other than a trial conducted by a Magistrate or Court under the Code and it was observed that no specific mode or manner of inquiry has been provided under Section 202 Cr.P.C. The Supreme Court then noted that in the inquiry envisaged under Section 202 Cr.P.C., the witnesses are examined whereas under Section 200 Cr.P.C., examination of the complainant alone is necessary, with the option of examining the witnesses present, if any. The Supreme Court therefore held that 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 the inquiry envisaged under Section 202 Cr.P.C.

In **Abhijit Pawar v. Hemant Madhukar Nimbalkar and another [(2017) 3 SCC 528]**, the Supreme Court observed that, after the amendment of Section 202 Cr.P.C., the admitted position in law is that in those cases where the accused resides beyond the area in which the Magistrate exercised his jurisdiction, it is mandatory that the Magistrate conduct an inquiry or investigation before issuing process. The Supreme Court observed that there is a vital purpose/objective behind this amendment, *viz*., to ward off false complaints against persons residing at far off places in order to save them from unnecessary harassment. It was held that the amended provision cast an obligation on the Magistrate to conduct an inquiry or direct investigation before issuing process, so that false complaints are filtered and rejected. It was held that the requirement of an inquiry/investigation before issuing process is not an empty formality. *Per* the Supreme Court, as to what kind of inquiry is needed under this provision was already explained in **Vijay Dhanuka** (*supra*).

The Supreme Court further held that if the High Court was satisfied that the mandatory requirement of Section 202 Cr.P.C. was not fulfilled before issuing process, this argument could be considered on merits as it is a settled proposition of law that a purely legal issue could be raised at any stage of the proceedings and more so, when it went to the root of jurisdiction.

Earlier, in **Mehmood Ul Rehman vs. Khazir Mohammad**

Tunda and others [(2015) 12 SCC 420], the Supreme Court observed that there must be sufficient indication in the summoning order passed by the Magistrate that he is satisfied that the allegations in the complaint constituted an offence. The Supreme Court further observed that though no formal or speaking or reasoned order is required to be passed at the stage of Section 190 Cr.P.C. or Section 204 Cr.P.C., there must be sufficient indication of application of mind by the Magistrate to the facts constituting the commission of an offence and the statements recorded and the result of the inquiry or report of investigation under Section 202 Cr.P.C., if any, so as to proceed against the offender.

More recently, in **Birla Corporation Limited vs. Adventz Investments and Holdings Limited and others [(2019) 16 SCC 610],** the Supreme Court observed that it is obligatory that the Magistrate, before summoning the accused residing beyond his jurisdiction, either inquire into the case himself or direct investigation to be made by the police as to whether or not there are sufficient grounds for proceeding against the accused. It was observed that while ordering issuance of process, the Magistrate must take into consideration the averments in the complaint, the statements of the complainant and the witnesses examined and that there has to be application of mind as to whether the materials brought would constitute an offence and whether there are sufficient grounds to proceed against the accused. The Supreme Court held that this

cannot be a mechanical process and non-application of mind by the Magistrate cannot be brushed aside as a procedural irregularity.

In **S.K. Bhowmik vs. S.K. Arora and another, [2007 (4) RCR (Criminal) 650]**, a learned Judge of this Court considered the scope of an inquiry under Section 202 Cr.P.C. The learned Judge noted that the amendment w.e.f 23.06.2006 had not brought in any change insofar as the nature of the inquiry required to be held under Section 202 Cr.P.C. was concerned. The learned Judge noted that it was only made obligatory in a case where the accused was residing at a place beyond the area in which the Magistrate exercised jurisdiction and this seemed to be the only change that was introduced by way of the amendment. The learned Judge observed that even prior to the amendment, holding of an inquiry before issuance of process was within the discretion of the Magistrate and it continued to be so unless the accused person was residing beyond the territorial jurisdiction of the Magistrate. The learned Judge further observed that the nature of inquiry envisaged under Section 202 Cr.P.C. had not undergone any change and held that the nature of such inquiry would vary with the circumstances of each case but the inquiry, as contemplated, would certainly not be exhaustive. Reference was made by the learned Judge to **Kewal Krishan vs. Suraj Bhan and another [AIR 1980 SC 1780]**, wherein the Supreme Court had observed as under:

> 'All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused. At

> this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial Court. The standard to be adopted by the Magistrate in scrutinizing the evidence is not the same as the stage of framing charges. Even at the stage of framing charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. *A fortiori*, at the stage of Sections 202/204, if there is *prima facie* evidence in support of the allegations in the complaint relating to a case exclusively triable by a Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session.'
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> The learned Judge then referred to **Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and others [AIR 1976 SC 1947]**, wherein the Supreme Court had observed as under :
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> 'The scope of the inquiry under Section 202 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. In fact, in proceedings under Section 202 the accused has got absolutely no *locus standi* and is not entitled to be heard on the question whether the process should be issued against him or not.'
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> The learned Judge accordingly held that the degree of formality of the proceedings and the width and depth of the inquiry would be entirely within the discretion of the Magistrate. The learned Judge observed that the inquiry would be only for the limited purpose of finding out whether a *prima facie* case for issue of process was made out

and if the Magistrate were to meticulously appreciate the evidence, it may lead to a lapse on his part in overstepping the discretion available to

him under Section 202 Cr.P.C.

The learned Judge held that whether a *prima facie* case was made out from the evidence recorded or not would be a matter within the discretion of the Magistrate but the inquiry or investigation in a case where the accused resided beyond his jurisdiction cannot now be wished away, being mandatory.

In **Tej Kishan Sadhu vs. State and another [2013 (3) DLT (Criminal) 381 = 2013 SCC OnLine Delhi 1753]**, a learned Judge of the Delhi High Court culled out the legal principles applicable to a Section 202 Cr.P.C. inquiry. The learned Judge held that an inquiry or investigation mandatorily has to be held by the Magistrate when the accused is residing beyond the area in which he exercises his jurisdiction and for the purpose of carrying out the inquiry or investigation, the following options were held to be available to the Magistrate:

> '(a) If the Magistrate inquires into a case himself, then in such an inquiry, the Magistrate may, if he thinks fit, take the evidence of witnesses on oath.
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> (b) If the Magistrate directs an investigation; the same may be made through a police officer or by such other person, as he thinks fit.
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> (c) If the offence is triable exclusively by the Court of Sessions, then he shall call upon the accused to produce all witnesses and examine them on oath and no direction for investigation in a case exclusively triable by the court of Sessions shall then be made.
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> (d) The investigation that can be directed under Section 202 of the Cr.P.C. is a limited investigation unlike the investigation as envisaged under Section 156(3) of the Code at the pre-cognizance stage.
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> (e) At the time of directing investigation through the police or some other person, as the Magistrate may think fit, the Magistrate can spell out the kind of information he is desirous of in such an investigation.

> (f) After holding the said inquiry or investigation, the Magistrate if finds that no prima facie case is made for issuance of process, shall pass an order for dismissal of the complaint under Section 203 of the Cr.P.C. or may issue process against the accused under Section 204 of the Cr.P.C.
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> The object and purpose of holding an inquiry/investigation under Section 202 of the Code is to find out whether there is sufficient ground for proceeding against the accused or not.'

In **CRM-M-24398-2017**, titled **'Ramesh Vinayak vs. Gurpreet Singh Ahluwalia and another'**, decided by a learned Judge of this Court on 05.02.2018, the complainant examined himself as CW-1 and marked documents, Exs. C-1 to C-4. He also examined 3 other witnesses. Thereafter, the Magistrate issued summons. The learned Judge however held, on facts, that the Magistrate had neither conducted an inquiry himself nor obtained a report from the police under Section 202 Cr.P.C. and had therefore passed the summoning order without following the due procedure. This case turned upon its own facts, as the learned Judge did not elaborate as to why the examination of witnesses fell short of an inquiry, as posited by the Supreme Court in **Vijay Dhanuka** (*supra*).

In **CRM-M-20260-2008**, titled **Dr. Jasminder Kaur and another vs. Rajkaran Singh Boparai,** decided on 03.10.2013, a learned Judge of this Court dealt with the scope of an inquiry under Section 202 Cr.P.C. The learned Judge held, on facts, that no inquiry under Section 202 Cr.P.C. had been made though it was mandatory as the accused lived beyond the territorial jurisdiction of the Magistrate. The learned Judge relied upon the law laid down in **S.K. Bhowmik** (*supra*) and observed that examination of the complainant and witnesses, if any, under Section

200 Cr.P.C. is done while or for taking cognizance and thereafter, the Magistrate can either hold an inquiry or direct investigation to be made by a police officer or any other person so as to decide as to whether there are sufficient grounds for him to proceed further. The learned Judge therefore held that after taking cognizance, the stage of issuing process would come under Section 202 Cr.P.C. and the same can be postponed by the Magistrate if he thinks it fit to hold an inquiry or direct an investigation to see if there are sufficient grounds for proceeding or not. This inquiry has now been made obligatory in a case where the accused resides at a place beyond the area in which the Magistrate exercises jurisdiction and it would mean that such inquiry/investigation is mandatory even when the Magistrate has taken cognizance after examining the complainant and his witnesses, if any, under Section 200 Cr.P.C. The learned Judge therefore held that examination of the complainant and witnesses, as envisaged under Section 200 Cr.P.C., cannot be equated to or be a substitute for the inquiry required under Section 202 Cr.P.C. The learned Judge observed that prior to the amendment, it was in the discretion of the Magistrate to hold an inquiry or have the case investigated but the same has now been made mandatory in the case of a person residing at a place beyond his area of jurisdiction. The nature of this inquiry or investigation however continued to be the same as before, i.e., prior to the amendment w.e.f 23.06.2006. The learned Judge therefore held that examination of the complainant and an eye-witness under Section 200 Cr.P.C. could not be

equated to an inquiry under Section 202 Cr.P.C. It is on this basis that the learned Judge held the summoning order in that case to be unsustainable.

It may however be noted that the very same learned Judge dealt with this issue again in **CRM-M-19918-2017**, titled **'Gurmail Singh and another vs. Gurmeet Singh',** decided on 08.05.2019. Therein, the learned Judge observed on facts that the complainant had examined, apart from himself, two other witnesses. In that view of the matter, the learned Judge took note of the law laid down in **Vijay Dhanuka** (*supra*) and held that the requirement of an inquiry under Section 202 Cr.P.C. had been fully complied with as the Magistrate had himself inquired into the matter.

Though there seems to have been some ambiguity and lack of clarity as to the exact scope and extent of the inquiry that is posited under Section 202 Cr.P.C. and made mandatory, w.e.f. 23.06.2006, in so far as accused living beyond the area of jurisdiction of the Magistrate is concerned, that issue now stands settled in the light of the judgments of the Supreme Court in **Vijay Dhanuka** (*supra*) and **Abhijit Pawar** (*supra*). In terms of these two decisions, it is now clear that it would be sufficient if the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, examines not only the complainant but also his witnesses. In **Vijay Dhanuka** (*supra*) it was categorically pointed out that in an inquiry envisaged under Section 202 Cr.P.C., the witnesses are also examined whereas under Section 200 Cr.P.C., examination of the complainant alone is

necessary, with an option of examining witnesses present, if any.

Therefore, if the Magistrate considers and applies his mind to the statements made by the witnesses in addition to the statement made by the complainant, apart from documentary evidence, if any, while coming to the conclusion that enough grounds are made out to proceed against the accused, it would be sufficient exercise on his part to pass muster under Section 202 Cr.P.C. Be it noted that there is no restriction placed upon the Magistrate that he should not go by such statements, if already recorded under Section 200 Cr.P.C., while inquiring into the matter and applying his mind at the stage of Section 202 Cr.P.C. After all, the statements would be the same. Application of mind on the part of the Magistrate is what is made the *sine qua non* to fulfill the mandate of holding an inquiry under Section 202 Cr.P.C. and such application of mind must be manifest and apparent from the order issuing process.

It would be neither necessary nor proper for the Magistrate to weigh the evidence at that stage or even indicate an opinion in broad terms as to the evidentiary value of such statements and documents. It would suffice if the Magistrate records the fact that he had gone through the material placed before him, including the statements of the complainant and his witnesses and that he, *prima facie*, found that sufficient grounds were made out to proceed against the accused. As pointed out by the Supreme Court, the Magistrate would overstep his jurisdiction if he goes beyond this bare requirement and expresses an opinion on the merits of the matter before the accused enters his defence.

It is in the light of the aforestated legal principles that the impugned summoning order would have to be tested. Perusal thereof reflects that the learned Magistrate at Ludhiana took into account the preliminary evidence that had been recorded at the stage when the complaint was received, *viz*., on 12.01.2016. On the said day, the respondent had examined himself as CW-1 and also three other witnesses. The learned Magistrate noted the contents of the complaint filed by the respondent and the statements of the respondent and his witnesses. Thereupon, he recorded that from an appraisal of the preliminary evidence, *prima facie*, it stood established that Accused No.1 had made and Accused Nos. 2 to 4 had published the statements regarding the respondent, by dubbing him a drug racketeer with an intention to harm his reputation. The learned Magistrate thereafter dealt with the issue of his own jurisdiction and put a query to the respondent's Advocate as to how he could entertain the complaint. He then recorded that from the law quoted by the learned counsel for the complainant, it stood proved that if the newspaper is published at one place and circulated at other places, it would give jurisdiction to the Courts at all those places. Thus having satisfied himself on all these aspects, the learned Magistrate summoned the accused to face trial.

The summoning order clearly demonstrates application of mind by the learned Magistrate at Ludhiana and all relevant issues were duly considered by him before issuing process. This Court therefore finds

that the summoning order was passed after due compliance with the requirements of Section 202 Cr.P.C. and there was no violation of the mandate of this statutory provision.

Thus, this Court finds that no grounds made out in either of the petitions warranting interference with the impugned orders passed by the learned Judicial Magistrate First Class, Ludhiana, in relation to Complaint No.69 of 2016. No separate grounds were argued or established for quashing the subject complaint.

Both the petitions are accordingly dismissed.

Interim orders in both cases shall stand vacated.

(SANJAY KUMAR)
JUDGE

03.12.2020
Kang

Whether speaking : Yes
Whether reportable : Yes