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205 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-18905-2016 (O&M)

Date of Decision: 20.01.2025

MALA A. MALHOTRA

...Petitioner

V/S

PIYUSH GUPTA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anurag Arora, Advocate and
Ms. Radhika Mehta, Advocate for the petitioner.

Mr. Vikas Sharma, Advocate for
Mr. Pawan Kumar Garg, Advocate for the respondent.

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of criminal complaint No. 544/14.12.2011/16.05.2016 titled as *Piyush Gupta Vs. Tarun Kumar and Others (Annexure P-1)* and summoning order dated 29.05.2012 (Annexure P-11) and orders dated 03.05.2016 (Annexure P-12) whereby learned Magistrate has issued non-bailable warrants against the petitioner and also all subsequent proceedings arising therefrom.

2. The complainant has alleged that he had purchased one plot of the project D.D. City, a project of D.D. Township Ltd. at Sector 77, Faridabad, having an area of 200 Sq. Yard @ Rs. 7350/- Sq. Yards, from accused in the year 2010 vide booking receipt no. F-038, dated 13.05.2005 in lieu of depositing amount of Rs. 3 Lakhs. He purchased the plot from the authorized broker of the company. It was already booked in the name of the accused no. 6-Mala Malhotra (petitioner herein). The consolidated amount of three cheques is Rs. 9 lakh. After this the accused issued certain

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documents to the complainant and informed him that the plot is at Sector 77, *Nehar Par*. After receiving these documents, when the complainant went to the company's-office to get the plot transferred in his name, the accused persons demanded Rs. 5 Lakh as transfer fees. They also demanded Rs. 4 lakh as the second installment and assured him that after this the plot will be allotted to the complainant. On this complainant issued another cheques, in the name of accused company and the accused issued a receipt of the above cheques which bears the signature of persons authorized by the accused. At the time of issuance of receipts, accused persons have assured the complainant that plot will be allotted to him within 15 days and possession within 1 year. They also informed him that very soon they are going to obtain the license. Complainant alleged that the accused persons neither allotted him plot nor the possession was given. Doubting the *bona fides* of accused person's, complainant visited the site at Sector 77 Faridabad, and he found that there was no progress regarding the project. He went to the office of the accused and asked for the status and license to develop the colony, but no information was provided to him. Thereafter, the complainant sent a legal notice through his legal counsel which also remained unanswered. On making an enquiry at Government Office, the complainant came to know that accused persons had already obtained the requisite license. It appeared that due to *mala fide* intention they have not started work on the site. It had also come to the complainant's notice that the said land, to which project is concerned, has been sold out to some other company. On the basis of afore said allegations, complaint(*supra*) was registered.



3. Learned counsel for the petitioner *inter alia* contends that no allegation of cheating or forgery etc. can be fastened upon the petitioner and there are only general and vague allegations against the petitioner in the complaint filed by the complainant. Learned counsel further submits that petitioner has nothing to do directly or indirectly with the accused-company. Learned counsel further submits that there is no evidence available on record to connect the present petition with the accused company and to suggest that she had joined hands with the other accused in the alleged commission of offences of cheating and forgery and learned Court below has erred in summoning the petitioner to face the trial.

4. *Per contra*, learned counsel for the respondent submits that looking at the allegations made in the complaint, learned Court below *prima facie* has rightly summoned the petitioner along with other accused persons for the offences under Sections 406, 420, 467, 468, 471, 34 and 120-B of Indian Penal Code and there is sufficient material available to connect the present petition with the alleged occurrence.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the summoning order dated 29.05.2012 (Annexure P-12) was passed without following the drill of Section 202 of the Cr.P.C.

6. The Hon'ble Supreme Court in *Abhijit Pawar vs. Hemant Madhukar, 2017(3) SCC 528, National Bank of Oman vs. Barakara Abdul Aziz and another 2013(2) SCC 488* and this Court in *Dr. Jasminder Kaur vs. Raj Karan Singh Boparai CRM-M-20260-2008* has held that the drill of Section 202 of the Cr.P.C. is mandatory in nature.



7. A two Judge bench of Hon'ble Supreme Court in **Abhijeet Pawar (supra)**, speaking through Justice A.K. Sikri has held:-

“28. No doubt, the argument predicated on Section 202 of the Cr.P.C. was raised for the first time by A-1 before the High Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter (See : National Textile Corpn. Ltd. Vs. Nareshkumar Badrikumar Jagad; [(2011) 12 SCC 695].

29. We may like to record that though Mr. Bhatt had refuted the arguments founded on Section 202 of Cr.P.C., even he had submitted that in case this Court is satisfied that mandatory requirement of Section 202 is not fulfilled by the learned Magistrate before issuing the process, this Court can direct the Magistrate to do so. Mr. Bhatt, for this purpose, referred to the judgment in the case of the National Bank of Oman.

30. For the aforesaid reasons, Criminal Appeal arising out of SLP (CrI) No. 9318 of 2012 is allowed thereby quashing the notice dated 24 th November, 2009 in respect of A-1 with direction to the learned Magistrate to take up the matter afresh qua A-1 and pass necessary orders as are permissible in law, after following the procedure contained in Section 202, Cr.P.C.”

8. A two Judge bench of the Hon'ble Supreme Court in **National Bank of Oman(supra)** has held as follows:

“10. We are of the view that the High Court has correctly held that the above-mentioned amendment was not noticed by the C.J.M. Ahmednagar. The C.J.M. had failed to carry out any enquiry or ordered investigation as contemplated under the amended Section 202 of the Code of Criminal Procedure. Since it is an admitted fact that the accused is residing outside the jurisdiction of the C.J.M. Ahmednagar, we find no error in the view taken by the High Court. 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 of the Code of Criminal Procedure. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached



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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 of the Indian Penal Code. The C.J.M. will pass fresh orders after complying with the procedure laid down in Section 202 Code of Criminal Procedure, within two months from the date of receipt of this order.”

Further, a Co-ordinate bench of this Court in ***Dr. Jasminder Kaur (supra)*** has made the following observations:

“Therefore, in view of the law laid down, on which reliance has been placed by learned counsel for the petitioners, I find that the examination of the complainant and eye witness alone under Section 200 Cr.P.C. cannot be held as the enquiry as prescribed under Section 202 (1) Cr.P.C. Admittedly, in the present case, no enquiry as prescribed under Section 202 (1) Cr.P.C. has been made by the Court and non-compliance of the provisions of Section 202 (1) Cr.P.C., which are mandatory in nature, the summoning order cannot be passed where the respondents are residing outside the jurisdiction of the Court where the complaint was filed.”

9. In view of the discussion above, the present petition is allowed and summoning order dated 29.05.2012 (Annexure P-11) issued by learned Judicial Magistrate Ist Class, Faridabad is set aside. The matter is remanded back to concerned Court to consider the matter afresh in accordance with law, by taking recourse to Section 225 BNSS.

10. The petition is disposed of accordingly.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

20.01.2025
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No