

(2008) 07 P&H CK 0140

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 54913-M of 2007

Gurlal Singh Grewal

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(1), 156(3), 173, 190
Penal Code, 1860 (IPC) — Section 34, 406, 418

Citation : (2009) 1 RCR(Criminal) 640

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Advocate : R.S. Rai, with Mr. Gauttam Dutt, for the Appellant; K.D. Sachdeva, DAG, Punjab and Mr. Vikram Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

M.M.S. Bedi, J.—The extent of powers and scope of authority u/s 202 Cr.P.C. of a Magistrate after recording preliminary evidence but before issuing process to the accused directing the police to investigate and submit a report, is required to be determined in the present case.

2. The petitioner has invoked the inherent jurisdiction of this Court u/s 482 Cr.P.C. challenging the order dated 20.11.2007 (Annexure P-7) passed by the learned Additional Chief Judicial Magistrate, Ludhiana, which reads as follows:

"Consideration is heard today. This Court is of the opinion that before arriving on any conclusion, that whether the accused are to be summoned or not to be summoned, in the present case, the inquiry is required to be conducted, as such, the present complaint in original is forwarded to SHO, P.S. Divn. No. 5 Ludhiana, for conducting inquiry in the present complaint, on the facts complainant alleges. The Ahlmad will retain the photostat copy of the file and will keep the original statement with him and send the photostat to the police of P.S. Divn. No. 5, Ludhiana. SHO shall summon the complainant and his witnesses and record their statements and then conduct an inquiry and give his report on or before

19.2.2008."

3. Pursuant to the above said order, SHO, S.I. Jarnail Singh, P.S. Division No. 5, Ludhiana, as per the reply filed on behalf of the State, called both the parties on 24.12.2007 for inquiry but since this Court had vide order dated 21.12.2007 stayed the operation of the order, he had sent the complaint back to the Magistrate, as is apparent from Annexure R-2/T.

4. Learned counsel for the petitioner Shri R.S. Rai, Senior Advocate had contended that the Magistrate after having taken cognizance of the offence by recording the evidence of the complainant and his witnesses, CW1 to CW4, ought to have, on the basis of the appreciation of the preliminary evidence, issued summons to the respondents as the petitioner had been able to prima facie establish the offences alleged against respondents 2 to 4. The impugned order, referring the matter to the concerned SHO for conducting an inquiry tantamounts to an abuse of the process of the Court, which would result in manifest injustice to the petitioner as the inquiry, which was initiated by the police was contrary to all canons of criminal justice as the accused party, which does not have any locus standi stood summoned prejudicing the rights of the complainant. The order of the trial Court is without jurisdiction and is thus liable to be set aside.

5. On the other hand, appearance was put in by respondents 2 to 4 and a serious objection was raised by filing a reply contending that the petitioner has indulged in a blatant misrepresentation of facts and on the misconstruction of the provisions of Section 202 Cr.P.C. Referring to the provisions of Sections 200 to 202 Cr.P.C., it was argued that the Magistrate has acted perfectly in consonance with the provisions of Section 202(1)(b) Cr.P.C. as the Magistrate, after examining the complainant and his witnesses had found that it was necessary to further probe into the matter, therefore, a direction of investigation by police was an appropriate step in the interest of justice.

6. Although this petition does not involve the determination of question whether the private respondents are required to be summoned on the basis of the averments in the complaint and preliminary evidence produced but since the Magistrate vide impugned order dated 20.11.2007 (Annexure P-7) has expressed an opinion that an inquiry is required to be conducted for forming an opinion before arriving at a conclusion whether accused are to be summoned or not to be summoned on the facts, as alleged by the complainant, a brief cursory (Cursory ?) reference will have to be made to the allegations in complaint for proper appreciation of the impugned order, as reasons for subjective or objective satisfaction are not mentioned in the impugned order. Even the scope and extent of inquiry, which is to be conducted by the police is also not mentioned. A copy of the complaint, filed by the petitioner before the trial Court, has been produced on the record as Annexure P-5. In the said complaint under sections 406/418/34 IPC, the complainant-petitioner has alleged that his father Joginder Singh Grewal had constituted in 1973 Gurdev Dharamarath trust and he is the member of the Governing Body of Gurdev Hospital run by the trust as well as by the trustee of

Sardar Joginder Singh Charitable Trust, which is a major donor of the above said Trust, namely, Sri Gurdev Dharamarath Trust. The accused persons had stopped calling the complainant petitioner in the meeting of the said Trust and dishonestly and with mala fide intention in connivance with each other have taken over the management/administration of the said Trust. The accused persons have also taken a lot of investments in the form of donations as well as other reliefs from the Government in the daily administration of the Trust including the hospital, which was built and being run by the Turst on the land, which is jointly owned by the Sri Gurdev Dharamarath Trust with other three Tursts, namely, Gurparsad Trust, Mata Gurmail Kaur Charitable Trust and Gurkartar Dharamarath Trust. All the above said Trusts have undivided property/land measuring 8-1/2 acres in village Sunet District and Tehsil Ludhiana. The complainant has also alleged that all the trustees in connivance with each other in order to achieve wrongful benefits and personal gains have sold some land measuring 2175 sq. yds vide sale deed executed on 22.3.2006 at a price of Rs. 5000/- per square yard, whereas the actual market value is more than Rs. 50,000/- per square yard. On the basis of the said allegations, the complainant-petitioner had filed a complaint u/s 406/418/34 IPC. After examining four witnesses i.e. CW1 Gurlal Singh, CW2 Parmod Gupta, Ahlmad of Civil Judge (Jr. Division), CW3 Rajan Sharma Clerk, Sub Registrar Office, Ludhiana and CW4 Krishan Anand Estimator/Valuer, District Court, Ludhiana, the complainant closed the evidence on 2.10.2007. The complaint was adjourned to 20.11.2007 for consideration vide order dated 19.11.2007. On 20.11.2007, the trial Court passed the impugned order, which has been reproduced herein above.

7. A perusal of the order dated 20.11.2007 (Annexure P-7) indicates that the evidence produced by the petitioner was considered by the Learned Judicial Magistrate but he formed an opinion that before arriving at any conclusion whether the accused are to be summoned or not to be summoned, an inquiry is required to be conducted, as such the complaint in original was forwarded to SHO, P.S. Division No. 5, Ludhiana for conducting an inquiry in the complaint on the facts, alleged by the complainant in the complaint. The Ahlmad was directed to retain the photostat copy of the file and keep the original statements of the witnesses with him and send only the photostat copies of the said statements to the Police. The SHO was required to summon the complainant and his witnesses; record their statements; conduct an inquiry and give his report on or before 29.2.2008.

8. So far as the authority of the Magistrate, after summoning the complainant and his witnesses and sending the matter requiring further probe by the police, is concerned, it would be relevant to refer to the enabling provisions of Cr.P.C., regarding the taking of cognizance by a Magistrate on a private complaint. Chapter XV of Cr.P.C. dealing with the complaint to the Magistrate reads as follows:

200. Examination of complainant.

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, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or

(b) If the Magistrate makes over the case for inquiry, or trial to another Magistrate u/s 192:

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

201. Procedure by Magistrate not competent to take cognizance of the case.

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall -

(a) If the complaint is in writing, return it for presentation to the proper court with an endorsement to that effect;

(b) If the complaint is not in writing, direct the complainant to the proper court.

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him u/s 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:

Provided that no such direction for investigation shall be made -

(a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions or

(b) Where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to

produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Court on an officer in charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint.

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) u/s 202, 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.

9. The provisions regarding issue of process are contained in a separate chapter i.e. Chapter XVI regarding commencement of proceedings before a Magistrate.

10. The above said provisions came up for consideration before the Supreme Court in Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, . In the said judgment the question to be determined by the Supreme Court was whether in view of Clause (a) of the first provision of Section 202(1) Cr.P.C. a Magistrate, who receives a complaint discloses an offence exclusively triable by the Court of Sessions, was debarred from sending the same to the police for investigation u/s 156(3) Cr.P.C. The Cr.P.C. had been amended in the year 1974. The Hon''ble Supreme Court had considered the provisions of Section 202 Cr.P.C. and held that the power to order the police investigation u/s 156(3) Cr.P.C. is different from the power to direct investigation conferred by 202(1) Cr.P.C. The relevant observations are reproduced as follows:

"The power to order police investigation u/s 156(3) is different from the power to direct investigation conferred by Section 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the cases. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power u/s 156(3) can be invoked by the Magistrate before he takes cognizance of the offence u/s 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation u/s 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence u/s 156 and ends with a report or charge-sheet u/s 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered u/s 202 to direct,

within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding." Thus the object of an investigation u/s 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."

11. From a perusal of the above observations of Hon''ble the Apex Court, it is clear that the provisions of Section 202 Cr.P.C. regarding postponement of issue of process against the accused under Chapter XV can be adopted when the evidence collected is deemed insufficient to take a decision as to the next step in the prescribed procedure. The investigation, which can be entrusted to the police would be solely for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused.

12. The observations of the Hon''ble Mr. Justice Rosy and Another Vs. State of Kerala and Others, , regarding the scope of Section 202 Cr.P.C. are as follows:

"Under section 200 read with Section 202 Cr.P.C., it is only at the discretion of the Magistrate to decide whether to hold an inquiry or not before issue of process to the accused. In view of the provisions of Sections 200, 203 and 204, the question of complying with the proviso to Section 202(2) would arise only in cases where the Magistrate before taking cognizance of the case decides to hold the inquiry and further decides to take evidence of witnesses on oath. But the object and purpose of holding inquiry or investigation u/s 202 is to find out whether there is sufficient ground for proceeding against the accused or not and that holding of inquiry or investigation is not an indispensable course before the issue of process against the accused or dismissal of the complaint. It is an enabling provision to form an opinion as to whether or not process should be issued and to remove from the Magistrate's mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath."

13. In the said judgment, the Hon''ble Judge relying upon judgments in Chandra Deo Singh Vs. Prokash Chandra Bose and Another, ; Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, ; Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, Mohinder Singh Vs. Gulwant Singh and others, Piara Singh v. State of Punjab, (1980) 2 SCC 401 , held as follows:

"Further, the inquiry u/s 202 is of a limited nature. Firstly, to find out whether there is a prima facie case for issuing process against the person accused of the offence in the complaint and secondly, to prevent the issue of process in the complaint which is either false or vexatious or intended only to harass such a person. At that stage, the evidence is not to be meticulously appreciated, as the limited purpose is to find out "whether or not there is sufficient ground for proceeding against the accused". The standard to be adopted by the Magistrate in scrutinising the evidence is also not the same as the one which is to be kept in

view at the stage of framing charges. At the stage of inquiry u/s 202 Cr.P.C. the accused has no right to intervene and it is the duty of the Magistrate while making an inquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made."

14. In *Tula Ram and Others Vs. Kishore Singh*, , considering the power of a Magistrate to take cognizance under sections 190, 200 to 204 in context to the provisions of Section 156(3) Cr.P.C. and Section 202 Cr.P.C. to order investigation, the Hon"ble Supreme Court on interpretation of the provisions laid down the following legal proposition:

"1. That a Magistrate can order investigation u/s 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under sections 190, 200 to 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation u/s 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance u/s 156(3) of the Code receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action u/s 190 as described above."

15. In *Bhagat Ram Vs. Surinder Kumar and Others*, the Chief Judicial Magistrate after examining the complainant and his witnesses directed the investigation to be done by the police as he felt that the matter needed further probe. After receipt of the police report, matter was heard afresh. Thereafter, process was

issued against the respondents therein. The order of the Magistrate was challenged on the ground that having once taken cognizance and proceeded to hold the inquiry u/s 202 Cr.P.C., the Magistrate could not have referred the matter for inquiry/investigation by the police at all and he should have proceeded in the matter himself. The Hon"ble Supreme Court held that the procedure adopted by the Magistrate was perfectly in order in view of the provisions of Section 202(1) proviso (b) Cr.P.C. The relevant portion is reproduced as under:

"It is clear from a perusal of the order made by the learned Magistrate that he has not done anything other than to comply with the provisions of Section 202(1) proviso (b) of the Cr.P.C., that after examining the complainant and his witnesses he found that it was necessary to further probe into the matter and, therefore, directed investigation to be done by the police and after the investigation was done by the police and on report being filed by them, he heard the matter afresh and directed issue of summons. We find that the procedure adopted by the learned Magistrate is perfectly in order."

16. A similar view has been taken by this Court in Sukhwinder Kaur v. Kulwinder Singh and others. 2003 (4) RCR(Criminal) 767 : 2004 (1) PLR 93, wherein the power of the Magistrate to postpone the issuance of process against the accused and direct the investigation to be made by the police officer with an object to reach a conclusion that there exists sufficient ground for issuance of a process. Following the ratio of the judgment in Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, it was held that such an order of the Magistrate will not suffer from the lack of jurisdiction on the ground that the Magistrate had already taken cognizance by recording preliminary evidence prior to the issuance of the process. In this context, the judgment of the Hon"ble Supreme Court in Jamuna Singh and Others Vs. Bhadai Sah, , needs to be referred to, where the order passed by a Magistrate after recording preliminary evidence of the complainant u/s 200 Cr.P.C. was considered in context to the power to order investigation u/s 156(3) Cr.P.C. and Section 202 Cr.P.C. and it was observed as follows:

"As a last resort the learned counsel for the appellants argued that the Magistrate had acted without jurisdiction in asking the police to institute a case and so the proceedings subsequent to that order were all void. As we have already pointed out, the order of the Magistrate asking the police to institute a case and to send a report should properly and reasonably be read as one made u/s 202 of the Cr.P.C.. So, the argument that the learned Magistrate acted without jurisdiction cannot be accepted. At most it might be said that in so far as the learned Magistrate asked the police to institute a case he acted irregularly. There is absolutely no reason, however, to think that that irregularity has resulted in any failure of justice. The order of conviction and sentence passed by the High Court cannot be reversed or altered on account of that irregularity."

17. On the basis of the above said judgments, the impugned order cannot be set aside on the ground that a Magistrate did not have any jurisdiction to order

investigation after having recorded the preliminary evidence. It is, thus, held that the impugned order is not without jurisdiction but whether the discretion has been exercised in a manner, which has resulted in the miscarriage of justice and an abuse of the process of the law, is the next question, which is required to be determined. In this context it will be pertinent to again refer to the provisions of Section 202 Cr.P.C., as held in *Rosy and another v. State of Kerala, and others* (supra). The provisions of Section 202 Cr.P.C. would be attracted in cases where the Magistrate before taking cognizance of the case decides to hold the inquiry and further decide to record evidence of the witnesses on oath but the object and purpose of holding inquiry or investigation u/s 202 Cr.P.C. is to find out whether there is sufficient ground for proceeding against an accused or not and that holding of an inquiry or investigation is not an indispensable course before the issue of the process against the accused or dismissal of the complaint. The provision of Section 202 Cr.P.C. is an enabling provision to help Magistrate to form an opinion as to whether a process is to be issued or not. One of the objects of Section 202 Cr.P.C. is to remove from the Magistrate's mind any hesitation or doubt that he may have felt upon reading of the complaint and on the consideration of the complainant's evidence produced at the preliminary stage. The Legislature in its wisdom has specifically used the words "if he thinks fit" in Section 202(1) Cr.P.C. As per the bare language of Section 202 Cr.P.C. a Magistrate is empowered to direct an investigation to be made by the 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 after the complainant and his witnesses have been examined on oath u/s 202 Cr.P.C.

18. So far as the amended Section 202 Cr.P.C. w.e.f. 23.6.2006 is concerned, it is mandatory upon the Magistrate to hold an inquiry u/s 202 Cr.P.C. (as amended) especially to find out whether or not there are sufficient grounds for proceeding against the accused, depending upon the facts of the each case, if the accused is residing at a place beyond the area, in which the Magistrate exercises jurisdiction but the amendment has not brought about any change regarding the nature of the inquiry, which is required to be held u/s 202 (1) Cr.P.C. Holding of an inquiry before issuing of a process had been a discretion of a Magistrate and it continues to be so unless the accused person is the resident beyond the territorial jurisdiction exercised by the Magistrate. The Magistrate is not required necessarily to issue process against an accused on the basis of the preliminary evidence produced before him as a matter of course. He is entitled to hold an inquiry, if after going through the statements of the complainant and the witnesses he is not satisfied that a case for summoning is made out. In case the Magistrate wishes further inquiry into the matter, he is required to follow the procedure indicated in Section 202 Cr.P.C. In case the statements of the complainant and the witnesses, which are before him u/s 200 Cr.P.C. are not considered enough in respect to a particular controversy or doubt in the mind of the Magistrate, it is always optional for the Magistrate to defer the issuance of a process against an accused as per the law laid down by the Supreme in *Bhagat*

Ram, Sukhwinder Kaur, Deverapalli and Jamuna Singh's cases (supra). The sole objective of an inquiry to postpone the issuance of a process is for the purpose of deciding whether or not there is sufficient ground for proceeding and not to initiate a fresh case on police report but to seek assistance in completing proceedings already initiated upon the complaint but the scope of inquiry u/s 202 Cr.P.C. is extremely limited. The said scope came up before Hon''ble the Supreme Court in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, wherein it was observed as follows:-

"The scope of the inquiry u/s 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 u/s 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."

19. In the present case, after the Magistrate had passed the impugned order dated 20.11.2007 (Annexure P-7), keeping the scope of inquiry vague, the SHO, S.I. Jarnail Singh, P.S. Division No. 5 had called both the parties on 29.12.2007 for inquiry, which clearly reflects that the scope of inquiry u/s 202 Cr.P.C. has been unnecessarily extended, which could cause prejudice to the petitioner and create a confusion in the mind of the Magistrate to form an opinion regarding issuance of process on the basis of the preliminary evidence produced before him. The scope of inquiry u/s 202 Cr.P.C. cannot be extended beyond the limits laid down in Smt. Nagawwa's case (supra) followed by the Supreme Court in Mohinder Singh Vs. Gulwant Singh and others, The inquiry is made 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 proceedings u/s 202 Cr.P.C. the accused has got absolutely no locus standi and he is not entitled to participate in the inquiry whether the process should be issued or not.

20. It is, thus, held on the basis of judgments of the Supreme Court, mentioned hereinbefore that the Magistrate certainly has a jurisdiction to order inquiry u/s 202(1) Cr.P.C. but the said discretion has to be exercised in consonance with the sound judicial principles. In Ranjit Puri and Others Vs. Uggar Sain, an order passed by the Magistrate, not recording reasons for postponing the issue of process and directing the police investigation was set aside by the our High Court. The order directing the police to investigate the matter, after preliminary investigation and the order of issuing process without proper application of judicial mind, was held to be bad.

21. It has been observed in Rosy's case (supra) that the provision of Section 202, Cr.P.C. is enabling provision for the Magistrate to form an opinion as to whether or not process should be issued and remove from the Magistrate's mind

any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath.

22. The statutory discretion vested with the Judicial Magistrate, in the present case, after the entire preliminary evidence had been produced by the petitioner and was open to the Judicial Magistrate to consider the preliminary evidence and to find out in accordance with the settled principle of law whether any prima facie offence appeared to have been committed by the respondents and to summon them. The various principles to weigh the evidence need not be emphasised as it is settled principle of law laid down by the Hon'ble Supreme Court in various judgments including Kewal Krishan Vs. Suraj Bhan and Another, to the effect that the standard to be adopted by the Judicial Magistrate in scrutinizing the evidence is not the same as at the stage of framing charges. At the stage of Section 204 Cr.P.C., if there is prima facie evidence in support of the allegations in the complaint, that would be sufficient ground for issuing process to the accused. Standard of the said evidence so collected to disclose sufficient grounds for proceeding further is lower than the one to be adopted at the stage of framing charges. It is always open to the Magistrate to weigh the probability and prima facie truthfulness of the evidence produced at the preliminary stage and to form an opinion that no ground exists for proceeding against the accused by passing a speaking order. Wide discretionary power has been conferred u/s 202(1) Cr.P.C. to postpone the issue of process and to either hold an inquiry himself or to direct an investigation to be made by the police officer as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. When a statute gives wide discretionary power to an authority or Court to adopt any one of the procedures prescribed under law, it becomes mandatory for the said authority for recording reasons for exercising the power even if the statute does not expressly enjoin upon the said authority to do so. It goes without saying that the reasonableness of the exercise of discretion can be decided keeping in view the object, which the statute seeks to achieve while granting discretion. The impugned order dated 20.11.2007 (Annexure P-7) shows that the Magistrate has not passed a speaking order giving reasons for exercising the powers of postponement of issue of process. The judicial discretion cannot be guided by expediency. The Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judicial discretion has to be exercised in accordance with law and set of legal principles. The discretion, which encourages illegality or perpetuates illegality cannot be exercised. Order dated 20.11.2007 (Annexure P-7) indicates that the trial Court had considered and heard the complaint on the said date but by a cryptic order without mentioning the reason or without disclosing the hesitations in the Magistrate's mind, the complaint has been sent for inquiry to the SHO without mentioning the scope and parameters of the inquiry, which could clarify the factors, which created doubt in the mind of the Magistrate to arrive at a conclusion whether or not a prima facie case exists for the issuance of process to the respondents.

23. In view of the above discussion, I am of the considered opinion that the

impugned order dated 20.11.2007 (Annexure P-7) has been passed by the Judicial Magistrate without proper judicious application of mind. The said order being vague and uncertain having been passed, extending unreasonably the scope of the inquiry u/s 202(1) Cr.P.C. is liable to be quashed.

Accordingly, the petition is allowed and the impugned order dated 20.11.2007 (Annexure P-7) is hereby quashed.