
(2012) 11 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M- 30998 of 2011

Meena H. Madhani

APPELLANT

Vs

M/s Dixon Knitwears

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 200, 202, 202(1), 482

Citation : (2012) 11 P&H CK 0037

Hon'ble Judges : Vijender Singh Malik, J

Bench : Single Bench

Advocate : Vivek Salathia, for the Appellant; Saurab Goel, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Singh Malik, J.—Meena H. Madhani, proprietor of M/s Shree Krishna Apparels, Kolkata (West Bengal) has brought this petition under the provisions of section 482 Cr.P.C. for quashing of criminal complaint No. 812/2 dated 25.11.2009 (Annexure P-1) titled as M/s Dixon Knitwears v. M/s Shree Krishna Apparels as well as the summoning order dated 27.04.2010 (Annexure P-2) and all the consequential proceedings arising therefrom. Learned counsel for the petitioner has submitted that the petitioner is a resident of Kolkata. According to him, the court summoning her is located at Ludhiana (Punjab). According to him, as per the provisions of section 202(1) Cr.P.C. the court is required to make enquiry before issuing process to the petitioner.

2. Learned counsel for the petitioner drew my attention to Annexure P-2 the order of learned Judicial Magistrate Ist Class, Ludhiana summoning the petitioner. According to him, the order does not reveal that the enquiry envisaged by section 202(1) Cr.P.C. had been conducted by the Magistrate. According to him, for this reason the order becomes bad. He has further submitted that in similar situation, in the cases given below, the orders of summoning has been held violative of the provisions of section 202(1) Cr.P.C. and have been set aside:-

S.K. Bhowmik Vs. S.K. Arora and Another,

2- Smt. Neeta Sinha Vs. P.S. Raj Steels Private Ltd.,

3- Savesa Sidhu Vs. Harleen Sidhu and Another,

4- DSM Pharma Chemicals Venlo B.V. Vs. Vijay Kumar Garg, and 5- Shivjee Singh Vs. Nagendra Tiwary and Others,

3. Learned counsel for the complainant-respondent has submitted, on the other hand, that though requirement of enquiry is there in section 202(1) Cr.P.C., yet the scope of enquiry is not explained in the said provision and the fact that the Magistrate examined the complainant/attorney of the complainant and had taken the other documentary evidence and had gone through the same would show that he had conducted the required enquiry. He has placed reliance in this regard upon a decision of Hon'ble Supreme Court of India in Shivjee Singh Vs. Nagendra Tiwary and Others, where it is laid down that the enquiry as required by section 202(1) Cr.P.C. is not a detailed enquiry in which all the evidence proposed to be led by the complainant at the trial is to be examined. He has also drawn my attention to a decision of a Coordinate Bench of this Court in Kapila Trading Co. & Anr. v. M/s Mittal Trading Co. Crl. Misc. No. M-3258 of 2010 decided on 10.02.2012 where relying upon the decision in Shivjee Singh's case, supra, it has been held that no specific mode of enquiry, as mentioned in section 202 Cr.P.C., is laid down in the provision and the enquiry conducted by the Magistrate was held to be satisfying the requirement of the said provision.

4. The examination of complainant is mandatory u/s 200 Cr.P.C. The same is, however, not necessary in a case where a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint. Section 202 Cr.P.C. is captioned as "Postponement of issue of process". Under this provision, a 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 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. All the evidence is required to be recorded by the Magistrate in a case triable exclusively by the court of Session. This provision is also interpreted in Shivjee Singh's case, supra, as not laying down the requirement of taking the entire evidence of the complainant. If this is so, then the requirement of a detailed enquiry cannot be read into section 202(1) Cr.P.C.. Requirement of this enquiry by the Magistrate himself or by a police officer is directory, but it is mandatory in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction.

5. Now a question would again arise as to what is the scope of this enquiry. No specific mode of such enquiry has been laid down in any of the provisions of the

Code of Criminal Procedure. There is nothing before me to say that the enquiry conducted by the Magistrate by examining the attorney of the complainant and taking the documents is not an enquiry about which the provision u/s 202(1) Cr.P.C. speaks. The decision in Shivjee Singh's case supra is clear enough in laying down that the enquiry in which some evidence sufficient to show a prima-facie case is recorded is an enquiry satisfying the requirements of section 202 (1) Cr.P.C. The same has been rightly followed in Kapila Trading Co. & Anr.'s case supra. In the decisions cited by learned counsel for the petitioner, the requirement for conducting enquiry u/s 202 Cr.P.C. is highlighted and laid down as mandatory but the scope of this enquiry has nowhere been delineated. In these circumstances, I find that the impugned order cannot be called in question for non compliance with the provisions of section 202 Cr.P.C. and the said order is, therefore, not bad. Accordingly, I find no merit in the petition and dismiss the same.