
(2009) 05 CHH CK 0001
In the Chhattisgarh High Court

Saroj Sharma (Smt.)	Vs	APPELLANT
Babulal and Another		RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 200, 202, 202(1), 204
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (2010) 2 MPHT 69

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—By this petition, the petitioner has challenged the legality and propriety of the order dated 27-1-2003 passed by the 4th Additional Sessions Judge, Raigarh, in Criminal Revision No. 161/2002 affirming the order dated 23-7-2002 passed by the Chief Judicial Magistrate, Raigarh, in Criminal Case No. 1080/2002 whereby the learned Chief Judicial Magistrate has registered criminal case against the petitioner for the offence punishable u/s 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code.

2. The order is challenged on the ground that the Court below has committed grave irregularity resulting into miscarriage of justice by taking cognizance without any sufficient prima facie material and has overlooked the mandatory provisions of Section 202 of the Code of Criminal Procedure.

3. I have heard learned Counsel appearing for the parties and perused the order impugned and copy of other documents filed on behalf of the petitioner.

4. Learned Counsel for the petitioner submitted that the offence punishable u/s 420 of the Indian Penal Code is cognizable offence and the Court is under obligation to direct the police to investigate the offence u/s 202(1) of the Code of Criminal Procedure, but instead of directing the police for investigation, the Court

himself has inquired into the complaint and has taken cognizance against the petitioner and thereby committed an illegality.

5. On the other hand, learned Counsel appearing for the respondents have supported the order impugned and submits that the Court was competent to take cognizance and inquired into the complaint. The Court below has not committed any illegality in the order impugned. The Court was not under obligation to direct the police for investigation u/s 202(1) of the Code of Criminal Procedure.

6. From perusal of the order impugned, it reveals that respondent No. 1 has filed complaint against the petitioner for the offence punishable u/s 138 of the Negotiable Instruments Act and Section 420 of the Indian-Penal Code before the Court of the Chief Judicial Magistrate, Raigarh. After examining the complainant u/s 200 of the Code of Criminal Procedure, learned Chief Judicial Magistrate has taken cognizance for the offence punishable u/s 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code against the petitioner.

7. In the present case, Chief Judicial Magistrate, Raigarh has made an inquiry under Sections 200 and 202 of the Code of Criminal Procedure and has issued process u/s 204 of the Code of Criminal Procedure after taking cognizance for the offence punishable u/s 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code against the petitioner.

8. The provisions of Section 202 of the Code of Criminal Procedure read as under:

Postponement of issue of process.-- (1) Any Magistrate, on receipt of a complaint of an offence of 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 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 powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

Sub-section (1) of Section 202 of the Code of Criminal Procedure makes the provisions for postponement of issue of process and also makes the provisions for making an inquiry on the complaint by the Court itself or directing an investigation to be made by a police officer.

9. In this case, the Court has chosen the first option and has inquired into the case by himself and on the basis of inquiry, the Court has taken cognizance of the offence. Direction of investigation and investigation by the police is not mandatory or is not obligatory upon the Magistrate making an inquiry into the complaint and the Magistrate is competent to inquire into the case by himself. The Court has not committed any illegality by making an inquiry into the complaint and taking cognizance against the petitioner. I do not find any illegality or irregularity resulting into miscarriage of justice or any ground for invoking extra-ordinary jurisdiction.

10. Consequently, the petition being devoid of merit is liable to be dismissed and it is hereby dismissed.