
INQUIRY BY MAGISTRATE UNDER SECTION 202 CRPC AND ISSUANCE OF PROCESS

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A) Section 202 of Code of Criminal Procedure 1973

202. 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 under section 192, may, if he thinks fit, 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 Session; 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 under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses 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 Code on an officer- in- charge of a police station except the power to arrest without warrant.

B) Meaning of 'Inquiry' U/s 202 CrPC

Hon'ble Supreme Court has held in the case of *Vijay Dhanuka v. Najima Mamtaj*, (2014) 14 SCC 638 that: "14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held

the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows: “2. (g) ‘inquiry’ means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;” It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. 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 an inquiry envisaged under Section 202 of the Code..”

C) Scope of ‘Inquiry’ U/s 202 CrPC-

Hon’ble Supreme Court has held in the case of Mohinder Singh v. Gulwant Singh, (1992) 2 SCC 213 that:

“11. This Court as well as various High Courts in a catena of decisions have examined the gamut and significance of Section 202 of the Code and settled the principle of law, the substance of which is as follows: The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. (Vide Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar.)

D)Whether Inquiry Mandatory –

Hon'ble Supreme Court has held in the case of *Vijay Dhanuka v. Najima Mamtaj*, (2014) 14 SCC 638 that: "12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows: "False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

The Constitution Bench of the Apex Court in suo motu Writ Petition (CRL) No.2 of 2020 in *Re: EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF THE N.I. Act, 1881*, headed by the then Hon'ble The Chief Justice of India on 16/4/2021, while touching the significant aspects revolving around Section 138 of the Negotiable Instruments Act, 1881 ("the Act") and on being concerned with large number of pending cases, the cause was taken up, for examining the reasons for the delay in disposal of these cases and one of the facet which Their Lordships deemed appropriate to focus upon, was in regard to "Inquiry u/s.202 of the Code in

relation to Section 145 of the Act”

Referring to the amendment in Section 202 of Code enforced with effect from 23/6/2006 vide Act No.25 of 2005, which made it mandatory for the Magistrate to conduct an inquiry before issuance of the process, in a case where the accused resided beyond the area of the jurisdiction of the Court, the diversion of opinion among the High Courts relating to the applicability of the said provisions to the complaints filed under Section 138 of the Act, was noted.

The amicus curiae advanced his submissions reflecting upon the imperative nature of the amendment and what is recorded in paragraph no.11, of the Constitution Bench decision, deserves a reproduction :-

“11 The learned Amici Curiae referred to a judgment of this Court in K.S. Joseph Vs. Philips Carbon Black Ltd, & Anr, where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in Vijay Dhanuka (supra), Abhijit Pawar (supra) and Birla

Corporation (supra), the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.”

E) Birla Corporation Ltd. vs Adventz Investments And Holdings Ltd. AIR 2019 SUPREME COURT 2390:-

It is obligatory upon the Magistrate under Section 202 of Code of Criminal Procedure that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.

The purpose of the enquiry under Section 202 CrPC is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused, a Supreme Court Bench of Justices R Banumathi and R Subhash Reddy reaffirmed.

The Court was hearing an appeal against a judgment of the Calcutta High Court in relation to the alleged theft of certain documents.

The appellant complainant, Birla Corporation had alleged theft of fifty-four documents belonging to the appellant company by the respondents. A criminal complaint was filed by the appellant company alleging the commission of offences punishable under Sections 379, 403 IPC read with Section 120-B IPC.

Since some of the accused persons were residents beyond local jurisdiction of the court, the trial court/the Magistrate fixed the matter for enquiry under Section 202 CrPC. An employee of the appellant Company by name PB Dinesh was examined.

Considering the averments in the complaint and the statement of the complainant and PB Dinesh, the Magistrate found that there are sufficient grounds for proceeding against all the sixteen respondents and ordered issuance of summons to the respondents

The respondents challenged the same before the High Court under Section 482 of CrPC. The High Court did not find any irregularity by the Magistrate with respect to the procedural aspect under Section 202 though it partly set aside the order of Magistrate on other grounds.

In the appeal before the Supreme Court, the Court dealt with the scope of enquiry contemplated under Section 202 CrPC and issuance of process.

Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused, the Court held.

Under the amended sub-section (1) to Section 202 CrPC, it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.

Only on such satisfaction, the Magistrate may direct issuance of process as contemplated under Section 204 CrPC, the Supreme Court made it clear.

The purpose of the enquiry under Section 202 CrPC is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused.

However, the Court said that the scope of enquiry under this section is extremely restricted only to finding out the truth of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 CrPC or whether the complaint should be dismissed.

At the stage of enquiry under Section 202 CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.

The Court also took note of the amendment made in 2005 to Section 202 of CrPC and the legislative intent behind the same.

By CrPC (Amendment) Act, 2005, in Section 202 CrPC of the Principal Act with effect from June 23, 2006, in sub-section (1), the words "...and shall, in a case where accused is residing at a place beyond the area in which he exercises jurisdiction..." were inserted.

In the opinion of the legislature, such amendment was necessary as false complaints were being filed against persons residing at far off places in order to harass them. The Court said that the object of the amendment is to ensure that persons residing at far off places are not harassed by filing false complaints making it obligatory for the Magistrate to enquire.

Since the amendment is aimed to prevent persons residing outside the jurisdiction of the court from being harassed, it was reiterated that holding of enquiry by Magistrate is mandatory. In this regard, the Court placed reliance on its own judgments in *Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another* (2017) 3 SCC 528 and *National Bank of Oman v. Barakara Abdul Aziz and Another* (2013) 2 SCC 488.

Further, 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. In this regard, reliance was placed on *Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others* [(1998) 5 SCC 749].

The Court, however, clarified that at the stage of issuance of process to the accused, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be prima facie satisfied that there are sufficient grounds for proceeding against the accused.

While ordering issuance of process against the accused, the Magistrate must take into consideration the averments in the complaint, statement of the complainant examined on oath and the statement of witnesses examined. As held in another case of Mehmood Ul Rehman, since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind whether the materials brought before the court would constitute the offence and whether there are sufficient grounds for proceeding against the accused. It is not a mechanical process.

In the instant case, the Court observed that for taking cognizance of the offence, the Magistrate inter alia relied upon the statement of the complainant and PB Dinesh to arrive at a conclusion that a prima facie case is made out against the respondents.

However, it was the opinion of the Supreme Court that neither the statement of the complainant nor the statement of PB Dinesh contained particulars as to the commission of the offence, so as to satisfy the Magistrate that there were sufficient grounds for proceeding against the accused.

“By perusal of the above order passed by the Magistrate, we find absolutely nothing to indicate the application of mind in taking cognizance of the offence against respondents No.1 to 16 including the respondents who are residents beyond the jurisdiction of the court. Though speaking or elaborate reasoned orders are not required at this stage, there must be sufficient indication that there was application of mind by the Magistrate to the facts constituting the commission of offence”, the Court held.

There were no averments in the complaint nor allegations in the statement of the complainant or witness PB Dinesh as to when and how the theft was committed, the Court further said. The complaint lacked particulars as to time and the place of theft or the person who has committed theft. There were no averments in the complaint alleging how the documents had gone out of the possession of the complainant.

In the absence of particulars, by mere possession of the documents or mere production of the documents in the Company Petition or civil suits, it cannot be said that sufficient grounds were made out to proceed against the accused or that the satisfaction of the Magistrate was well founded justifying issuance of process.

Hence, the Court ruled that the order of the Magistrate summoning the accused cannot be sustained. Thus, the High Court order holding that there was compliance of the procedure under Section 202 CrPC was set aside.

F) Right of Accused to participate in an Inquiry U/s 202 CrPC:-

Hon'ble Supreme Court has held in the case of Chandra Deo Singh v. Prokash Chandra Bose, 1963 SCC OnLine SC 4 that: "7. Taking the first ground, it seems to us clear from the entire scheme of Chapter XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go."

G) Investigation U/s 156(3) Versus U/s 202 CrPC :-

Hon'ble Supreme Court has held in the case of Ramdev Food Products (P) Ltd. v. State of Gujarat, (2015) 6 SCC 439 that: "21. On the other hand, power under Section 202 is of different nature. Report sought under the said provision has limited purpose of deciding "whether or not there is sufficient ground for proceeding". If this be the object, the procedure under Section 157 or Section 173 is not intended to be followed. Section 157 requires sending of report by the police that the police officer suspected commission of offence from information received by the police and thereafter the police is required to proceed to the spot, investigate the facts

and take measures for discovery and arrest. Thereafter, the police has to record statements and report on which the Magistrate may proceed under Section 190. This procedure is applicable when the police receives information of a cognizable offence, registers a case and forms the requisite opinion and not every case registered by the police. 22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. 22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”. Category of cases falling under para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall under Section 202.”

H) CONCLUSION:-

Chapter XV of the Code, which contemplates complaints to the Magistrate, which includes Section 202, intended to achieve twin objects; one being to enable the Magistrate to carefully scrutinize the allegations made in the complaint with a view to prevent a person named therein, as accused from being called upon to face unnecessary, frivolous or meritless complaint; and the other, to find out whether there is any material in existence, to support the allegations in the complaint. The Magistrate is therefore, duty bound to elicit all facts, having regard to the interest of the complainant, in absence of the accused, before he brings to book him for the accusations in the complaint. For forming an opinion to that effect, the Magistrate may himself hold an inquiry u/s. 202 of the Code, or direct investigation to be made by a police officer.

In a contingency, when he decides to conduct an inquiry, specifically against the persons residing outside his territorial jurisdiction, the inquiry must be aimed at ascertaining the truth or otherwise in the allegations made in the complaint. It is expected that the Magistrate shall not only rely upon the averments in the complaint, as it may many a times, contain unfounded allegations which require ascertaining of its veracity, before the process is issued, so as to separate the chaff from the grain.

Before the Magistrate acts on the complaint, by issuing process against the person named as an accused therein, he shall satisfy himself about the existence of sufficient ground(s), for

proceeding against him, particularly when he is residing outside his jurisdiction. The amended provision is aimed to prevent innocent persons residing at far places, from harassment by unscrupulous persons, filing unfounded and false complaints. This would necessarily involve recording of statement of the complainant on oath, in form of verification statement or recording evidence of any witnesses produced by the complainant, in support of the allegations in the complaint, to find out whether a prima facie case for issuance of process has been made out. This inquiry is restricted to, ascertaining the element of truth or falsehood of the allegations in the complaint, based on the material placed by the complainant before the Court, and the inquiry is limited only to this extent i.e. to find out, if there is any matter which calls for investigation.

Summoning of an accused in a criminal case, is a serious matter and it certainly cannot be a perfunctory exercise. The amendment introduced in the Code therefore, contemplates that a Magistrate shall examine the nature of allegations in the complaint and take into account the evidence, both oral and documentary, to find out if it is sufficient for the complainant to succeed in establishing the charge against the accused, and justify the issuance of process against him. It is nonetheless the duty of the Magistrate to prima facie find out, if the case is made out by the complainant against the accused before the process is issued, so as to avoid any frivolous or vexatious claims being taken forward by the Magistrate. Only on being satisfied that the offence is made out against the person(s) named in the complaint, the process would be issued and at this stage, all the relevant facts and circumstances shall be taken into consideration before issuing process, lest it would be an instrument in the hands of a private complainant, as vendetta to harass the named accused. Vindication of majesty of justice and maintenance of law and order in the Society, being the primary object of criminal justice, would not bring within its sweep, a personal vengeance.