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Neutral Citation No. - 2024:AHC:23992

AFR

Court No. - 91

Case :- APPLICATION U/S 482 No. - 41956 of 2023

Applicant :- Mohd. Amir And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Pranshu Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Mayank Kumar Jain

1. Heard Sri Pranshu Gupta, learned counsel for the applicant, learned counsel for the informant and AGA for the State.

2. Perused the record.

3. Present application under Section 482 Cr.P.C. has been filed for quashing the summoning order dated 27.01.2023 passed by Civil Judge, (Senior Division.)/F.T.C., Meerut in Complaint Case no. 1023 of 2022 (Neeraj Tyagi Vs. Mukesh Giri) under Sections 420, 406, 120B I.P.C. and order dated 30.09.2023 passed by Additional Sessions Judge, Court No. 16, Meerut in Criminal Revision No. 162/2023 (Mohd. Amir and Another Vs. State of U.P. and Another) along with the entire consequential proceedings arising out of the complaint case.

4. Opposite party no. 2 filed a complaint against Mukesh Kumar Giri, Vijendra Singh and present applicant under Sections 467, 468, 469, 471, 420, 406, 385, 193, 195, 196, 203, 211, 120B, 504, 506 I.P.C, P.S. Pallavpuram, District Meerut. After taking primary evidence, the learned Trial Court summoned the present applicant to face trial under Section 406, 420, 120B I.P.C. vide order dated 27.01.2023.

5. The brief facts of the complaint are summarised as under: –

(a) The complainant took loan of Rs. 16 lakhs from Mukesh Kumar Giri. Four cheques bearing nos. 018049 to 018052 were given by the complainant as security to this transaction. He repaid the loan to Mukesh

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Kumar Giri but these four cheques were not returned by him to the complainant;

(b) The complainant received a notice on 01.02.2016 by which he was informed that he had taken an amount of Rs. 70 lakhs from opposite party no. 2, Mukesh Kumar Giri. When the opposite party no. 2, Mukesh Kumar Giri made a demand he provided him two cheques bearing no. 018149 and 018050 for Rs. 35 lakhs each which had been returned by the bank. He was shocked to receive a notice and to read its contents. Mukesh Kumar Giri had committed breach of trust. He on the premise to deceive the complainant, misused the cheque which was given to him in the year 2011 by the complainant. The complainant was intending to take appropriate action against opposite party no. 2, Mukesh Kumar Giri but he came to know that a false F.I.R pertaining to case crime no. 314 of 2016 under Section 307, 406 I.P.C. in police station New Mandi, Muzaffarnagar has been lodged against him. After investigation the police submitted final report in the matter. When the record of final report was examined, he came to know that opposite party no. 2, Mukesh Kumar Giri had misused the four cheques given by the complainant. One cheque was given to present applicant- Mohd. Aamir who made entry of Rs. 40 lakhs and presented it to the bank. This cheque was dishonored since it was not issued by the complainant;

(c) On 25.09.2016, Mukesh Kumar Giri came to the complainant and stated that he hatched a conspiracy to usurp a huge amount from the complainant. He had provided one cheque to the applicant out of the four cheques given by complainant.

6. Sri Pranshu Gupta, learned counsel for the applicant submitted that on 21.03.2016, applicant no. 1 filed a complaint under Section 138 of Negotiable Instrument Act against opposite party no. 2, Neeraj Tyagi. The Court concerned after taking primary evidence summoned him to face trial under Section 138 of N.I. Act which is pending. During the pendency of these proceedings, opposite party no. 2 lodged an F.I.R against the

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applicants. After the investigation and taking material evidence by the Investigating Officer, a final report was submitted.

7. The learned counsel for the applicants further submitted that a protest petition was moved by opposite party no. 2. The concerned Court rejected the final report and registered the protest petition as complaint case. On 27.01.2023, after taking primary evidence on behalf of opposite party no. 2, the applicants were summoned to face trial under Section 420, 406, 120B I.P.C. vide order dated 27.01.2023. The applicants preferred a Criminal Revision before the Sessions Judge, Meerut as Criminal Revision No. 162 of 2023 (Mohd. Amir and another Vs. State of U.P. and another). The said revision was dismissed by the Court concerned.

8. The learned counsel for the applicants further submitted that since the applicants are the resident of District Muzaffarnagar and opposite party no. 2 is the resident of District Meerut, therefore, an inquiry under Section 202 (1) Cr.P.C. was mandatory but no such inquiry was made. The applicants were residing beyond the local jurisdiction of the Court concerned. The F.I.R was filed after three years of the proceedings initiated by the applicants as a counter blast case. No witness came forward to support the allegation made by the complainant which itself falsifies the entire case of opposite party no. 2.

9. The learned counsel for the applicants further submitted that the present proceedings are initiated by opposite party no. 2 as a counter blast case filed by applicant no. 1 under Section 138 N.I. Act. The present proceedings are initiated in order to defeat the proceedings and usurp the money to the tune of Rs. 40 lakhs which was taken by opposite party no. 2 from the applicant. It is also submitted that no specific role has been attributed to applicant no. 2 while only an allegation is levelled against him that applicant no. 1 involved him in conspiracy. The applicants did not know any person such as Mukesh Kumar Giri or Vijendra Singh. The entire story narrated by the opposite party no. 2 in his complaint is concocted and baseless. It appears from the perusal of the complaint that

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initially opposite party no. 2, knitted a story against the applicants and thereafter, maliciously and fraudulently entered into a compromise with Mukesh Kumar Giri. If there was any transaction between opposite party no. 2 and Mukesh Kumar Giri, the applicants have no concern with their transaction.

10. It is also submitted by the learned counsel for the applicants that applicant no. 2 had taken Rs. 40 lakhs as a loan from applicant no. 1. The money was taken from applicant no. 2. After repeated demand to return the money, opposite party no. 2 gave a cheque bearing no. 018052 dated 28.01.2016 for Rs. 40 lakhs which was not honoured by the bank for insufficiency of fund. Thereafter, proceeding were initiated under Section 138 of N.I. Act against opposite party no. 2.

11. To buttress its argument, the learned counsel for the applicant relied upon the following judgments of the Hon'ble Apex Court:-

(a) Eicher Tractor Limited And Others Vs. Harihar Singh And Another, (2008) 16 Supreme Court Cases 763;

(b) Ashok Kumar Gupta Vs. State of U.P. And Another, (2017) 11 Supreme Court Cases 239;

(c) Chandrasekar and Another Vs. Rajamani, 2020 SCC OnLine Mad 4777;

(d) Vijay Dhanuka And Others Vs. Najma Mamtaj And Others, (2014) 14 Supreme Court Cases 638;

(e) Abhijit Pawar Vs. Hemant Madhukar Nimbalkar And Another, (2017) 3 Supreme Court Cases 528;

(f) ODI JERANG Vs. NABAJYOTI BARUAH & ORS, 2023 LiveLaw (SC) 702.

12. Per contra, the learned AGA assisted by learned counsel for the informant opposed the prayer and submitted that the applicants with the connivance of Mukesh Kumar Giri presented a cheque for Rs 40 lakhs in the bank and intentionally got it dishonoured. The applicants were in

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conspiracy with Mukesh Kumar Giri who later narrated the entire story to the complainant. All the four cheques were given by the complainant to Mukesh Kumar Giri as a security against the loan of Rs. 16 lakhs. Mukesh Kumar Giri provided the cheque to present applicant no. 1 who presented it before the bank for payment. It is also submitted that the complainant never took the loan of Rs. 40 lakhs from applicant no.1. There is no evidence of transaction of Rs. 40 lakhs allegedly taken by applicant no. 2 from applicant no. 1. So far as the non-examination of any witness under Section 202 Cr.P.C. is concerned, relevant documents were submitted by opposite party no. 2. The learned Trail Court after perusing those documents summoned the applicants to face the trial.

13. In **Chandrasekar and Another Vs. Rajamani (Supra),** the Apex Court held that :

> *6. In R.P. Kapur v. State of Punjab [AIR 1960 SC 866] this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:*
>
> *(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*
>
> *(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;*
>
> *(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (AIR para 6)*
>
> *7. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent*

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abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana *v.* Bhajan Lal *[1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102) "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. It would not be proper for the High Court to analyse the case of the

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complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.

8. *The Hon'ble Supreme Court of India held that the subsequent complaint is nothing but counter blast to the proceedings initiated by the petitioners. In the case on hand, the private complaint lodged by the respondent is nothing but counter blast to the proceedings initiated by the petitioners herein. Therefore, the impugned complaint is manifestly attended with malafides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

14. In **Vijay Dhanuka And Others Vs. Najma Mamtaj And Others (Supra),** the Apex Court held that:

7. *In the present case, we are concerned with an order passed in a complaint case. Section 190 of the Code provides for cognizance of offences by Magistrates and the same reads as follows:*

*"**190.Cognizance of offences by Magistrates**.—(1) Subject to the provisions of this Chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—*

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

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(2) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

Section 190 of the Code finds place in Chapter XIV and from its plain reading, it is evident that the competent Magistrate, inter alia, may take cognizance of any offence, subject to the provisions of Chapter XIV, upon receiving a complaint of facts which constitute an offence. Section 192 of the Code empowers any Chief Judicial Magistrate to transfer the case for inquiry after taking cognizance to a competent Magistrate subordinate to him. In the present case, on receipt of the complaint, the learned Additional Chief Judicial Magistrate in exercise of the power under Section 192 of the Code, after taking cognizance of the offence, had made over the case for inquiry and disposal to the transferee Magistrate. Section 12(2) of the Code confers on the Additional Chief Judicial Magistrate the same powers as that of a Chief Judicial Magistrate. Hence, transfer of the case by the Additional Chief Judicial Magistrate after taking cognizance of the case to transferee Magistrate for inquiry and disposal is perfectly in tune with the provisions of the Code. The transferee Magistrate, thereafter, examined the complainant and her witnesses and only thereafter issued the process.

***8.** Section 200 of the Code, inter alia, provides for examination of the complainant on oath and the witnesses present, if any. Same 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 the witnesses, 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 under Section 192:

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

***9.** Under Section 200 of the Code, on presentation of the complaint by an individual, other than public servant in certain contingency, the Magistrate is required to examine the complainant on solemn affirmation 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, if any, various options are available to him. If he is satisfied that the allegations made in the complaint and statements of the complainant on oath and the witnesses constitute an offence, he may direct for issuance of process as contemplated under Section 204 of the Code. In case, the Magistrate is of the opinion that there is no sufficient ground for proceeding, the option available to him is to dismiss the complaint under Section 203 of the Code. If on examination of the allegations made in the complaint and the statement of the*

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complainant on solemn affirmation and the witnesses examined, the Magistrate is of the opinion that there is no sufficient ground for proceeding, the option available to him is to postpone the issue of process and either inquire the case himself or direct the investigation to be made by a police officer or by any other person as he thinks fit. This option is also available after the examination of the complainant only.

***10.** However, in a case in which the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction whether it would be mandatory to hold inquiry or the investigation as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, is the question which needs our determination. In this connection, it is apt to refer to Section 202 of the Code which provides for postponement of issue of process. The same reads as follows:*

*"**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, 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 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."

***11.** Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.*

***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*

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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.

***13.** In view of the decision of this Court in Udai Shankar Awasthi v. State of U.P. [(2013) 2 SCC 435 : (2013) 1 SCC (Civ) 1121 : (2013) 2 SCC (Cri) 708] , this point need not detain us any further as in the said case, this Court has clearly held that the provision aforesaid is mandatory. It is apt to reproduce the following passage from the said judgment: (SCC p. 449, para 40)*

*"40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it [**Ed.**: The matter between the two asterisks has been emphasised in original as well.] mandatory to postpone the issue of process [**Ed.**: The matter between the two asterisks has been emphasised in original as well.] where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases."*

***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:*

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> *"**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.*

15. It is admitted that the cheque number mentioned in the complaint made by opposite party no. 2 and in the complaint filed by applicant no. 1 against the opposite party no. 2 is same. The cheque bearing no. 018052 was been given by opposite party no. 2 to applicant no. 1. Applicant no. 1 initiated proceedings under Section 138 of N.I. Act against opposite party no. 2.

16. Opposite party no. 2 did not produce any witness under Section 202 Cr.P.C. which also reflects that the allegations made in the complaint by opposite party no. 2 are not supported with any evidence.

17. It is to be taken into consideration that the applicants are resident of District Muzaffarnagar while opposite party no. 2 is the resident of District Meerut. The learned Trial Court was aware about this fact that the applicants are residing beyond local jurisdiction of the Court concerned but even after that, no inquiry under Section 202 (1) Cr.P.C was conducted by it. It appears that the learned Trial Court as well as the Revisional Court completely ignored this fact that the applicants were not residing within the local jurisdiction of District Meerut.

18. In **Eicher Tractor Ltd. V.s Harihar Singh (Supra)**, the Hon'ble Apex Court observed that :

> ***13.** "6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor*

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desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest(when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

19. In the aforesaid case the Hon'ble Supreme Court quashed the proceedings and arrived at the conclusion that the proceedings were initiated by opposite party no. 2 as a counter blast.

20. In **Ashok Kumar Gupta Vs. State of U.P. (Supra),** the Hon'ble Apex Court held that:

***4.** The appellant sought quashing of the said complaint on the ground that the criminal complaint was a counterblast to the notice of dishonour of cheque upon which a summoning order had been passed and proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated by the appellant. The appellant relied on notice of dishonour, a copy of Criminal Complaint No. 135 of 2010 filed on 16-10-2010 and order of the Court dated 4-11-2010. Reliance has been placed on the judgments of this Court in Eicher Tractor Ltd. v. Harihar Singh [Eicher Tractor Ltd. v. Harihar Singh, (2008) 16 SCC 763 : (2010) 4 SCC (Cri) 425] , Mahindra and Mahindra*

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> *Financial Services Ltd. v. Rajiv Dubey [Mahindra and Mahindra Financial Services Ltd. v. Rajiv Dubey, (2009) 1 SCC 706 : (2009) 1 SCC (Civ) 321 : (2009) 1 SCC (Cri) 603] apart from Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] .*
>
> *5. It is submitted that while it is true that in quashing proceedings, the Court could not go into disputed version, but in the present case, the proceedings are clear abuse of process of law.*
>
> *6. On being asked, the learned counsel for the State fairly stated that the complaint appeared to be absurd. None has entered appearance on behalf of the complainant.*
>
> *7. After hearing the learned counsel for the parties and perusing the records, we are satisfied that the complaint filed by the complainant is clear abuse of the process of law.*

21. **In Abhijit Pawar Vs. Hemant Madhukar Nimabalkar And Another (Supra),** the Hon'ble Supreme Court quashed the proceedings on the basis that no inquiry was conducted by the Magistrate concerned. The order was passed by the Magistrate only after perusal of the statement of the complaint and after perusing the copies of the document filed on record.

In the present case also opposite party no. 2 did not produce any witness under Section 202 Cr.P.C. and merely on the basis of the statement of the complainant recorded under Section 200 Cr.P.C and peursing his documents, this impugned order summoning the applicants have been passed by the Magistrate.

22. In **O.D.I. Jerang Vs. Nabajyoti Baruah & Ors.(Supra)**, the Hon'ble Apex Court observed that where substantial compliance has not been made by the learned Magistrate it will result into failure of justice.

23. Admittedly, proceedings under Section 138 N.I Act are pending against opposite party no. 2 on the basis of the same cheque involving the same amount. After three years of initiation of those proceedings, the present proceeding are brought by opposite party no. 2. It is also pertinent to mention here that the learned Trial Court did not conduct any enquiry under Section 202 (1) of Cr.P.C since the applicants were residing beyond the local jurisdiction of that Court. The present proceedings are initiated

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as a counter blast against the applicants. No specific role has been attributed to applicant no. 2 about his involvement in the matter.

24. In view of the above, this Court is of the opinion that the present case squarely falls within the parameters indicated in category (7) of **State of Haryana Vs. Bhajanlal (Supra)**. Factual scenario as noted above clearly indicates that the present proceedings were initiated as a counter blast to the proceedings initiated by the applicants against opposite party no. 2. Continuance of such proceedings will be nothing but abuse of process of law. Therefore, this application under Section 482 Cr.P.C is liable to be allowed.

25. Accordingly, the present application u/s 482 is **allowed**.

26. The summoning order dated 27.01.2023 passed by Civil Judge (Sr.Div.)/F.T.C, Meerut in Complaint Case no. 1023 of 2022 (Neeraj Tyagi Vs. Mukesh Giri) under Sections 420, 406, 120B I.P.C. and order dated 30.09.2023 passed by Additional Sessions Judge, Court No. 16, Meerut in Criminal Revision No. 162/2023 (Mohd. Amir and Another Vs. State of U.P. and Another) are set aside and also the entire proceedings of the aforesaid complaint case are hereby quashed.

Order Date :- 08.02.2024
P.S

(Mayank Kumar Jain, J.)