

Before M. M. Punchhi, J.

BHAGWANT SINGH, *Petitioner.*

versus

SURJIT SINGH, *Respondent.*

Criminal Revision No. 1714 of 1982.

February 9, 1983.

Code of Criminal Procedure (II of 1974)—Sections 2(d), 190(1)(a) and 200—Complaint of an offence filed in a criminal Court—Personal presence of the complainant at the time of filing the complaint—Whether essential.

Held, that the Code of Criminal Procedure, 1973 is silent on the subject whether the complainant must personally present the complaint. But, it can safely be said, that a complaint can even be sent by post or by an authorised agent. But whether the Magistrate having received it would act thereon is purely within his discretion and it goes without saying that the discretion so exercised would be judicial and employed to achieve the well known objectives. But such a situation can go thus far and no right can be conceded in favour of the complainant to employ always such a method, unless there were justifiable reasons for so doing. It is clear requirement of the law that the complainant has to be examined and the earlier he makes himself available for the purpose the better it achieves the objectives of the law. Whether in a given case, the complainant could or could not personally present a complaint or make himself available at an appropriate time for his examination, depends on the facts and circumstances of each case. No hard and fast rule can be laid down for the purpose. It can thus safely be held that it is not essential for the complainant to be present at the time of the presentation of the complaint before a Magistrate but normally he must be present, unless he has justifiable reasons for not doing so and those reasons must be plausible and acceptable to appeal to the Court. (Para 4).

Petition under Section 401 Cr.P.C. for the revision of the Order of the Court of Shri N. D. Bhatara, P.C.S., Judicial Magistrate 1st Class, Sangrur, dated 25th October, 1982 dismissing the complaint and filing the same.

J. R. Mittal, Advocate, for the petitioner.

K. K. Cuccria, Advocate, for A. G. Punjab, for the respondents.

JUDGMENT

M. M. Punchhi, J.—(Oral).

(1) Does the law essentially require the complainant to be present at the time of the presentation of the complaint, is the significant question which has been raised in this petition for revision. And it has arisen in this manner.

(2) Dr. Bhagwant Singh was confined in District Jail, Sangrur. He filed a complaint in the Court of a Judicial Magistrate 1st Class, Sangrur through an Advocate. He could not file it personally for obvious reasons and thus did not make himself available to be examined by the Court in support thereof. Incidentally, the complaint itself had been filed against the Superintendent of the District Jail. The Magistrate dismissed the complaint solely on the ground of the absence of the complainant to present it and thus did not entertain it.

(3) The word 'complaint' as defined in the Code of Criminal Procedure, 1973 means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Obviously, the allegation thus made before a Magistrate is for a purpose and that is for inviting his attention to take action under the Code. Under Section 190(1)(a), a Magistrate is empowered to take cognizance of any offence on receiving a complaint of facts which constitute such offence. It is under section 200 of the Code that the examination of the complainant is required. It is provided therein that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complaint and the witnesses present, if any, and the substance of such examination shall be reduced to writing which shall be signed by the complainant and the witnesses, and also by the Magistrate. Prior to the provision now existing, section 200 of the Code of Criminal Procedure, 1898 required a Magistrate taking cognizance of an offence on complaint to at once examine the complainant. On that language, the view which predominated was that since the presentation of the complaint had to be followed by the complainant being examined at once, it presupposed that the complaint had to be presented personally to achieve that object. However, the old Code did not provide any such prerequisite specifically. In the present section 200 of the 1973 Code, the expression

about examining the complainant at once was omitted and it has now been left by requiring the Magistrate to examine the complainant. These words have significantly been omitted to obviate the controversy about the effect of the time interval between the receiving of a complaint and the complainant's examination. Thus it can safely be inferred that the predominated view that a complainant must present a complaint personally has been given a death blow. The mandate of law has now only been confined to the prerequisite that a Magistrate receiving a complaint must examine the complainant and reduce the substance of his examination in writing, and get it duly signed from the complainant, before he issues process. Needless to mention that the case of a public servant — complainant is at a different footing.

(4) The Code, as said before, is silent on the subject whether the complainant must personally present the complaint. But, it can safely be said, as has been noticed in some judicial precedents, that a complaint can even be sent by post or by an authorised agent. But whether the Magistrate having received it would act thereon is purely within his discretion. And it goes without saying that the discretion so exercised would be judicial and employed to achieve the well known objectives. But such a situation can go thus far and no right can be conceded in favour of the complainant to employ always such a method, unless there were justifiable reasons for so doing. It is clear requirement of the law that the complainant has to be examined and the earlier he makes himself available for the purpose the better it achieves the objectives of the law. Whether in a given case, the complainant could or could not personally present a complaint, or make himself available at an appropriate time for his examination, depends on the facts and circumstances of each case. No hard and fast rule can be laid down for the purpose. It can thus safely be held that it is not essential for the complainant to be present at the time of the presentation of the complaint before a Magistrate, but normally he must be present, unless he has justifiable reasons for not doing so. And those reasons must be plausible and acceptable to appeal to the Court.

(5) Now applying the aforesaid test to the present case, it is undisputed that the complainant was incarcerated in jail and physically unable to move out from those precincts to proceed to the Court. He could thus send the complaint even by post to the

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Magistrate with a view to his taking action under the Code. The mere fact that the complainant employed an Advocate to present his complaint to the Court cannot be put to a disadvantage; for the purpose sought to be achieved was the same. The Magistrate should have in the instant case then sent for the complainant from Jail for his examination. That power he undoubtedly had. Thus, in my view, the Magistrate's failure to adopt such procedure reveals an impropriety in his order and has led to miscarriage of justice. I have, therefore, no hesitation in quashing the said order.

(6) For the foregoing reasons, this petition is allowed and the impugned order is quashed. The learned Magistrate is directed to proceed with the complaint in the light of the observations aforesaid and in accordance with law. The complainant through his counsel is directed to put in appearance before the Learned Magistrate on March 1, 1983.

N.K.S.

Before D. S. Tewatia, J.

HARYANA STATE ELECTRICITY BOARD,—Petitioner

versus

CONTROLLING AUTHORITY AND DEPUTY LABOUR COMMISSIONER,
HARYANA and others,—Respondents.

Civil Writ Petition No. 49 of 1976,

February 16, 1983.

Payment of Gratuity Act (XXXIX of 1972)—Section 1(3)(b)—Punjab Shops and Commercial Establishments Act (XV of 1958)—Sections 2(iv), (viii) & (xxv) and 3(b)—Provisions of the Gratuity Act—Whether applicable to Haryana State Electricity Board—Section 3(b) of the Establishments Act—Whether excludes the Board from the said Act.

Held, that section 3 of the Punjab Shops and Commercial Establishments Act, 1958 removes the uncertainty about the fact as to whether an undertaking which supplies power or light to the public is or is not an 'establishment'. If section 3 of this Act had not been there, then it would have involved the interpretation of the definitional clause in question to