Before Mehinder Singh Sullar, J.

KAPILA TRADING CO. & ANOTHER,—*Petitioners*

versus

M/S MITTAL TRADING COMPANY,—*Respondent*

CRM No. M-3258 of 2010

10th February, 2012

Negotiable Instrument - Act, 1881 - S. 138 - Criminal Procedure Code, 1973 - Ss. 482, 200(a), 202, 203 & 204 - Petitioner company and its proprietor named in a criminal complaint filed under S.138 N.I. Act on account of dishonor of cheque - After taking cognizance and considering oral as well as documentary evidence. Ld. Trial Magistrate summoned accused- Without submitting to jurisdiction of trial Magistrate, petitioners accused filed present petition for quashing the complaints, summoning order contending that inquiry u/s 202(1) Cr.P.C. was not held by the Magistrate - Petition dismissed holding no specific mode of inquiry is provider for under the code - Magistrate after examining preliminary evidence has to see whether there is sufficient evidence to summon the accused.

Held, That the intention of the legislature to introduce the amendment of envisaged enquiry is clear, explicit and only for a limited purpose to see that the innocent persons are not harassed by unscrupulous persons by filing false complaints against those persons residing at far off places.

(Para 12)

Further held, That since any specific/particular mode of such inquiry is not provided under section 202 Cr.PC, in that eventuality, it would be clear from the record that the indicated inquiry would be deemed to have been made by the Magistrate before summoning the accused.

(Para 15)

Amit Rawal, Advocate, *for the petitioners.*

Ashok Bhardwaj, Advocate, *for the respondent.*

MEHINDER SINGH SULLAR, J. (ORAL)

(1) The contour of the facts and material, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record, is that M/s Mittal Trading Company through its sole proprietor Sanjiv Kumar complainantrespondent (for short "the complainant") filed a criminal complaint (Annexure P1) against petitioners-accused Kapila Trading Company and its proprietor Vivek Kapila, under section 138 of the Negotiable Instruments Act (hereinafter to be referred as "the NI Act"), inter-alia, pleading that they (petitioners-accused) purchased various items through different invoices from its firm. After the settlement of accounts on 13.6.2009, the balance amount of Rs.34,404/- was due towards them. In order to meet the legal liability, the accused gave cheque in question and assured that there will be sufficient balance in their accounts. When the cheque was presented in the bank at Bhawanigarh, District Sangrur, the same was dishonoured/returned with the remarks "Payment Stopped by Drawer", alongwith Memo dated 20.6.2009. After dishonour of the cheque, the complainant issued the legal notice to the accused on 20.7.2009, to which, they replied by mentioning the wrong and false facts with the intention to deter the complainant to recover the amount in question.

(2) Levelling a variety of allegations and narrating the sequence of events in detail, the complainant filed the complaint (Annexure P1) against the accused for the commission of indicated offence, in the manner described hereinabove.

(3) Taking cognizance of the complaint and after considering the preliminary oral (CW1) as well as documentary evidence, mark-A, affidavit (Ex.CW1/A) and Ex.C1 to Ex.C7, the trial Magistrate summoned the accused to face the trial under section 138 of the NI Act, by way of impugned summoning order dated 28.8.2009 (Annexure P6).

(4) Instead of submitting to the jurisdiction of trial Magistrate, the petitioners-accused straightway jumped to file the present petition for quashing the complaint (Annexure P1), summoning order (Annexure P6) and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.PC. That is how I am seized of the matter.

(5) After hearing the learned counsel for the parties, going through the record with their valuable help and after deep consideration over the entire matter, to my mind, there is no merit in the instant petition in this context.

(6) Ex facie, the arguments of the learned counsel that the cheque was not proved to have been issued to discharge the legal liability of petitioners and since the trial Magistrate did not hold the enquiry as envisaged under section 202 Cr.PC, so, the impugned complaint & summoning order are illegal, are neither tenable nor the observations of Hon'ble Apex Court in cases **National Small Industries Corporation Ltd. *versus* State (NCT) of Delhi) and others (1)** and **M.S.Narayana Menon alias Mani *versus* State of Kerala and another (2),** are at all applicable to the facts of the present case.

(7) As is clear that in National Small Industries Corporation Ltd.'s case (supra), the question before the Hon'ble Supreme Court was as to whether the clause (a) of the proviso to Section 200 of Cr.PC is applicable, in case the complaint is made in writing by the incorporeal body. After examining the relevant provisions, it was held that "where an incorporeal body is the payee and the employee who represents such incorporeal body in the complaint is a public servant, he being the de facto complainant, clause (a) of the proviso to Section 200 of the Code will be attracted and consequently, the Magistrate need not examine the complainant and the witnesses."

(8) Sequelly, in M.S.Narayana Menon alias Mani's case (supra), the second respondent (therein) was a member of the Cochin Stock Exchange and the appellant used to carry on transactions in shares through him. A complaint petition was filed by the second respondent (therein) against the appellant under Section 138 of the NI Act. It was alleged that a sum of Rs.3,00,033 was due to the second respondent from the appellant in relation to the said transactions. The appellant was said to have paid a sum of Rs.5000/- in cash and issued a cheque for a sum of Rs.2,95,033/-. The said cheque, when presented for encashment, got dishonoured due to insufficient funds in the account of the appellant. Earlier also, the appellant

(1) 2009(1) SCC 407
(2) 2006 (6) SCC 39

had issued a blank cheque to the respondent which, when presented for encashment, was returned with the remarks "account closed". The appellant stated that the said cheque was given to respondent 2 by way of security. During the course proceedings, the appellant (therein) raised a plea that respondent 2 was in dire financial assistance and the aforesaid cheque for a sum of Rs.2,95,033/- was given by way of loan so as to enable him to tide over his difficulties. He also adduced his evidence before the trial court. The trial court opined that the appellant failed to discharge the onus placed on him in terms of Section 139 of the NI Act. Thus, the trial court convicted and sentenced the appellant under section 138 of the NI Act. However, on an appeal preferred thereagainst by the appellant, the said judgment was set aside. The appellate court analyzed the evidence and concluded that the explanation offered by the appellant was more probable. Thereafter, the complainant i.e. the second respondent filed a criminal appeal before the High Court which was allowed vide impugned judgment. On the peculiar facts and in the special circumstances of that case, it was observed by Hon'ble Apex Court that the said cheque could not be said to have been issued in discharge of debt.

(9) Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the petitionersaccused in the present controversy. As indicated earlier, there are, inter-alia, direct and specific allegations contained in the complaint (Annexure P1) that the accounts between the parties were settled on 13.6.2009 and an amount of Rs.34,404/- was due towards the petitioners-accused. They issued the cheque in question in order to discharge their legal liability, which was dishonoured.

(10) The next cosmetic contention of learned counsel for petitioners that the Magistrate did not hold an inquiry under section 202 Cr.PC in this respect, is not only devoid of merit but misplaced as well. At the same time, there can hardly be any serious dispute with regard to the observations of this Court in cases **Smt. Neeta Sinha *versus* P.S.Raj Steels Private Ltd. (3)** and **Prem Kaur @ Premo *versus* Balwinder Kaur (4),** that holding an enquiry under Section 202(1) Cr.PC is essential before issuing summons,

(3) 2010 (3) R.C.R. (Crl.) 509

(4) 2009 (2) R.C.R. (Criminal) 4

but the petitioners cannot derive any benefit out of it in this behalf. Chapter XV deals with the institution of complaint to the Magistrate. Section 200 of the Code postulates that "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.

(11) Likewise, section 202 of the Code further posits that "any 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 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) xxx xxx xxx

(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.*

(12) Therefore, the intention of the legislature to introduce the amendment of envisaged enquiry is clear, explicit and only for a limited purpose to see that the innocent persons are not harassed by unscrupulous persons by filing false complaints against those persons residing at far off places. The amendment made 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. Sub-section (2) further provides that in an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath.

(13*)* Similarly, section 203 of the Code escalates that if, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall record his reasons for so doing. Once the complaint is not dismissed under section 203 Cr.PC and if in the opinion of a Magistrate taking cognizance of an offence, there is a sufficient ground for proceeding, then he will summon the accused as contemplated under section 204 Cr.PC.

(14) As is evident from the record that in the instant case, the complainant filed the complaint (Annexure P1) against the petitioners-accused, which was adjourned. The trial Court recorded the preliminary oral as well as documentary evidence. Having completed all the codal formalities (including the enquiry under section 202 Cr.PC) and on ultimate analysis of preliminary oral as well as documentary evidence on record, the trial Magistrate came to a definite conclusion that there is sufficient material on record to proceed against the petitioners-accused for the commission of indicated offence and summoned them, vide summoning order dated 28.8.2009 (Annexure P2), which is as under :-

> *"In the preliminary evidence, complainant tendered his affidavit Ex.CW/1 and thereafter, closed his preliminary evidence.*
>
> *Arguments for the purpose of summoning of accused heard. I have also gone through the entire evidence adduced on the file especially original cheque No.121143 of Rs.19786/- alleged to have been issued by accused in discharge of his legal liability towards complainant. However, on the assurance of the accused, when this cheque was presented by the complainant with Bank for encashment it is received back un-encashed alongwith memo bearing remarks "payment stopped by drawer". Accordingly, the complainant got issued a notice through his counsel calling upon the accused to make the payment within 15 days. Notice was sent through registered cover letter as is established from its postal receipt. However, despite service of the notice payment was not made by the accused. Hence the present appeal (Sic. complaint).*

In order to prove his case, complainant himself appeared into witness box as CW1 and tendered his affidavit Ex.CW1/A. He has also proved documents Ex.C1 to Ex.C7 and Mark A.

From the evidence as well as documents, a prima facie case u/s 138 of the Negotiable Instruments Act is made out against the accused. Let the accused be summoned to stand trial u/s 138 of NIA for 18.11.09 on filing of copy of complaint. PF/RC within 7 days."

(15) Therefore, since any specific/particular mode of such inquiry is not provided under section 202 Cr.PC, in that eventuality, it would be clear from the record that the indicated inquiry would be deemed to have been made by the Magistrate before summoning the accused. Moreover, no little prejudice of any kind is shown to have been caused to the accused in this relevant connection. This matter is no more res integra and is well settled. An identical question came to be decided by the Hon'ble Supreme Court in case **Shivjee Singh *versus* Nagendra Tiwary & Ors. (5),** wherein while interpreting the provisions of Chapter XV of Cr.PC, it was ruled in paras 10 to 12 as under :-

*"**10**. In **Kewal Krishan v. Suraj Bhan** (supra), this Court examined the scheme of Sections 200 to 204 and held :*

"At the stage of Sections 203 and 204 of the Criminal Procedure Code in a case exclusively triable by the Court of Sessions, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202 of the Criminal Procedure Code, there is prima facie evidence in support of the charge leveled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial Court. The standard

(5) 2010(7) SCC 578

to be adopted by the Magistrate in scrutinizing the evidence is not the same as the one which is to be kept in view at the stage of framing charges."

11. *The aforesaid view was reiterated in* ***Mohinder Singh v. Gulwant Singh*** *(supra) in the following words:*

"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." (emphasis supplied)

12. *The use of the word 'shall' in proviso to Section 202(2) is prima facie indicative of mandatory character of the provision contained therein, but a close and critical analysis thereof along with other provisions contained in Chapter XV and Sections 226 and 227 and Section 465 would clearly show that non examination on oath of any or some of the*

witnesses cited by the complainant is, by itself, not sufficient to denude the concerned Magistrate of the jurisdiction to pass an order for taking cognizance and issue of process provided he is satisfied that prima facie case is made out for doing so. Here it is significant to note that the word 'all' appearing in proviso to Section 202(2) is qualified by the word 'his'. This implies that the complainant is not bound to examine all the witnesses named in the complaint or whose names are disclosed in response to the order passed by the Magistrate. In other words, only those witnesses are required to be examined whom the complainant considers material to make out a prima facie case for issue of process. The choice being of the complainant, he may choose not to examine other witnesses. Consequence of such non-examination is to be considered at the trial and not at the stage of issuing process when the Magistrate is not required to enter into detailed discussions on the merits or demerits of the case, that is to say whether or not the allegations contained in the complaint, if proved, would ultimately end in conviction of the accused. He is only to see whether there exists sufficient ground for proceeding against the accused."

(16) In the same sequence, it was held as under (para 16):-

"As a sequel to the above discussions, we hold that examination of all the witnesses cited in the complaint or whose names are disclosed by the complainant in furtherance of the direction given by the Magistrate in terms of proviso to Section 202(2) is not a condition precedent for taking cognizance and issue of process against the persons named as accused in the complaint and the High Court committed serious error in directing the Chief Judicial Magistrate to conduct further inquiry and pass fresh order in the light of proviso to Section 202(2)."

(17) Meaning thereby, in the present case, the trial Magistrate has adhered to, substantially followed and complied with the provisions of Chapter XV in this relevant connection. Therefore, the indicated contrary

arguments of learned counsel for the petitioners "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances. The law laid down by Hon'ble Supreme Court in Shivjee Singh's case (supra) 'mutatis mutandis' is applicable to the facts of this case and is the complete answer to the problem in hand.

(18) Above-all, the remaining submissions that as to whether the cheque in question was blank, or it was subsequently filled by the complainant, or it was issued for the purpose of security or to meet the legal liability, whether the contents of the reply (Annexure P2) to the legal notice, other cheques (Annexures P3 to P5) and certificate (Annexure P7) etc. are correct or otherwise or what would be their effects on the merits of the case, can only be decided after the receipt of evidence. Such questions, relatable to the appreciation of evidence, now sought to be urged on behalf of the petitioners-accused, would be the moot points to be decided during the course of trial by the trial Court. If all such points, which require determination by the trial Court, are to be decided by this Court in the garb of petition under section 482 Cr.PC, then the sanctity of the trial would pale into insignificance and amount to nullify the statutory procedure of trial as contemplated under the Code of Criminal Procedure, which is not legally permissible.

(19) No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

(20) In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of the trial of the complaint case, as there is no merit, therefore, the instant petition is hereby dismissed, in the obtaining circumstances of the case.

(21) Needless to mention that nothing recorded, here-in-above, would reflect, in any manner, on merits during the course of trial of the complaint case, as the same has been so observed for a limited purpose of deciding the present petition in this relevant direction.

S. Sandhu