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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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**CRM-M-14283-2021 (O&M)
Date of decision: 20.07.2026**

Surjit Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Madan Sandhu, Advocate
for the petitioners.

Ms. Ruchika Sabherwal, Senior DAG, Punjab.

Mr. S. K. Chaudhary, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 482 of the Code of Criminal Procedure (*for short 'the Code'*), is for quashing of Complaint bearing No. 160 of 2017, titled as ***Hari Singh v. Jagjit Singh and another*** filed under Section 420 read with Section 34 Indian Penal Code, 1860 as well as summoning order dated 18.01.2020 passed by learned Judicial Magistrate First Class, Pathankot, whereby the petitioners had been summoned as accused to face trial in the aforesaid complaint.

2. The aforementioned complaint has been filed by respondent No.2-complainant-Hari Singh on the allegations that petitioner No. 2 had developed friendly relations with the complainant's son Mandeep Singh and one Baldev Singh and represented that he would facilitate their migration to Germany. On

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being induced by him, an amount of Rs. 8 Lakhs was paid by the complainant to petitioner No.1, Surjit Singh, father of petitioner No.2. It is further alleged that despite receiving the aforesaid amount, the accused neither arranged for visa nor refunded the money paid. Despite repeated demands, the accused avoided the complainant and refused to return the money and extended threats of dire consequences. Therefore, the complainant had filed aforesaid complaint against the accused persons and vide order dated 03.08.2019, the learned trial Court called for the report under Section 202 of the Code and based on the preliminary evidence, the petitioners were summoned vide impugned order dated 18.01.2020.

3. Feeling aggrieved from the aforementioned order, the petitioners have filed the present petition. While issuing notice of motion on 31.03.2021, the proceedings before the trial Court were stayed by this Court.

4. It is argued by learned counsel for the petitioners that the order passed by the learned trial Court suffers from infirmity and had been passed in a mechanical manner without due application of mind. It is further argued that the petitioners were residing abroad, an inquiry under Section 202 of the Code was directed to be conducted by the concerned SHO and subsequently the report was submitted to the Court on 01.10.2019, wherein it was observed that the transactions alleged have taken place at Kapurthala and not at Pathankot, the same has not been considered at all while passing the impugned order. The learned counsel for the petitioners has placed reliance on *M/s Pepsi Foods Ltd. v. Special Judicial Magistrate, 1997 (4) R.C.R. (Criminal) 761* to fortify his arguments.

5. Since the matter pertains to a private complaint, learned State

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counsel has chosen not to raise any arguments.

6. On the other hand, learned counsel for the respondent No. 2 has argued that there is no illegality in the impugned order. The petitioners have been rightly summoned after finding a *prima facie* case against them for commission of alleged offences.

7. This Court has heard the rival submissions.

8. A perusal of the impugned summoning order dated 18.01.2020 shows that the learned Magistrate, after noticing the statements of the complainant and his witnesses, has proceeded to summon the petitioners. It is further noticeable that though an inquiry under Section 202 of the Code was conducted and a report was submitted, however, the impugned order does not reflect the material/evidence collected during inquiry which forms basis for summoning the accused. Before proceeding further, it would be appropriate to refer to Section 202 of the Code, which deals with 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 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] [Inserted by Act 25 of 2005, Section 19 (w.e.f. 23-6- 2006).]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.

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9. On a bare reading of the section, it is clear that under the amended sub-section (1) to Section 202 of the Code, it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall inquire 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.

10. In *Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others (2015) 12 SCC 420*, the scope of inquiry under Section 202 Cr.P.C. and the satisfaction of the Magistrate for issuance of process has been considered and it was held as under:-

“2. Chapter XV Cr.P.C. deals with the further procedure for dealing with “Complaints to Magistrate”. Under Section 200 Cr.P.C, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person “for the purpose of deciding whether or not there is sufficient ground for proceeding”. If, after considering the statements recorded under Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so. 3. Chapter

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XVI Cr.P.C deals with “Commencement of Proceedings before Magistrate”. If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) Cr.P.C for attendance of the accused.”

11. The Hon’ble Supreme Court in ***Mehmood Ul Rehman’ case (supra)*** has categorically held that while issuing process, the Magistrate must indicate that he has applied his mind to the facts of the case and the material on record and there must be sufficient indication in the order that the Magistrate is satisfied that the allegations constitute an offence. It has been further held that summoning of an accused is a serious matter and cannot be done in a mechanical manner and that absence of such indication amounts to non- application of mind.

11. In the present case, though the inquiry which is obligatory in nature in the aforesaid cases was conducted but the order is completely silent on the material collected during the inquiry under Section 202 of the Code. Moreso, the impugned order is a non-speaking order. The same, therefore, cannot be sustained being passed without due application of mind. Consequently, the impugned order dated 18.01.2020 is hereby set aside. The petition stands allowed. The matter is remitted back to the learned trial Court for fresh consideration of the complaint in accordance with law. The learned Magistrate shall pass a fresh order after considering the inquiry conducted under Section 202 of the Code and thereafter proceed further in accordance with law.

20.07.2026*Waseem R. Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned
Whether reportable**Yes/No
Yes/No*