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A CASE COMMENT & INTERPRETATION OF:

VIJAY DHANUKA V/s. NAJIMA MAMTAJ (2014 (14) SCC 638.)

SC's LANDMARK JUDGEMENT INTERPRETING SECTIONS 200-202 OF THE Cr.P.C., 1973.

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❖ *INTRODUCTION*

The Code of Criminal Procedure (Cr.P.C.) forms a vital part of criminal law due to its procedural nature, which provides for a robust mechanism of rules and procedures to be followed in order to achieve justice. The legislature may pass countless acts classifying various wrong-doings as criminal offences. However, once, the said offence is committed, it is paramount to have a robust procedure to find out the truth of the matter in a fair & just manner while not harassing any of the related parties.

This paper solely focuses on Section 200 & 202 of the Cr.P.C. and its judicial interpretation. Whenever, a complaint u/s. 190 is filed before a competent magistrate by a complainant, there are certain pre-requisites which the magistrate must fulfill before issuing process u/s. 204 and sending out warrants/summons, as the case may be.

The said pre-conditions, having been enshrined in 200,202,203 of Cr.P.C., have gone through various amendments over time and, therefore, the interpretation of the same has come before various courts at different stages of criminal proceedings. ***One such interpretation was done by the apex court in the case of Vijay Dhanuka V/s. Najima Mamtaj.*** [1]

❖ *FACTS OF THE CASE*

A complaint was filed by the respondent, Najima Mamtaj against the accused Vijay Dhanuka before the additional CJM alleging commission of offence u/s. 323, 380, 506 of the IPC read with 34 IPC. The magistrate took cognizance of the complaint and transferred it to another magistrate for inquiry & disposal.

The transferee magistrate examined the complainant and its two witnesses under oath as mandated u/s. 200 of the Cr.P.C. Thereafter, the magistrate directed the issuance of process against the accused u/s. 204 of the code.

The petitioner/accused filed an application u/s. 482 Cr.P.C. before the Bombay High Court challenging the order issuing process on the ground that the *accused persons were residents of an area outside the territory of the magistrate who issued summons, an inquiry/investigation within the meaning of section 202 Cr.P.C. was mandatory* and that only after such an inquiry could the magistrate come to a conclusion as to whether or not sufficient grounds existed against the accused. The application was dismissed by the High Court.

The questions before the apex court were;

1. In a case where the accused is residing beyond the territorial

[1] 2014 (14) SCC 638.

jurisdiction of a magistrate, whether it would be mandatory for him to hold an inquiry/investigation to determine whether or not sufficient grounds exist for proceeding?

2. Whether the magistrate before issuing summons held an inquiry as mandated u/s. 202 Cr.P.C.?

❖ ***LEGISLATIONS INVOLVED***

1. Code of Criminal Procedure,1973. (Cr.P.C.)

2. Indian Penal Code, 1860. (IPC)

❖ ***ARGUMENTS ADVANCED***

As discussed above, the relevant provisions being section 190, 200, 202 & 204 of the Cr.P.C. talk about pre-requisites to be fulfilled by a magistrate before summoning/warranting the accused before him.

These measures are taken primarily for two reasons,

1. To completely satisfy the magistrate that a prima facie case is made out against the accused, thereby having sufficient grounds to proceed with the complaint.

2. To protect interests of the absent accused. This is crucial so as to protect the accused from false complaints and to protect him from embarrassment caused because of the same.

Whenever an aggrieved party wants to register a complaint against anyone,

1. **A Complaint** for the same is to be registered.[2]

2. Cognizance of the same is taken by a competent magistrate.[3]

3. After examining the contents of the complaint, the magistrate calls the complainant and its witnesses, if any, before himself and takes their statement on oath and makes them sign it.[4]

5. After the compliance with section 200, if the magistrate still isn't satisfied that a case is made out against the accused, he may order an investigation by the police or may even inquire into the case himself.[5]

6. ***However, section 202 doesn't end here. In a situation where the accused is residing beyond the territorial jurisdiction of concerned magistrate, it shall be mandatory for him to postpone the issuance process and order an investigation by the police or inquire into the case himself. This is done to be completely certain whether or not enough grounds exist for proceeding further.***

[2] Section 190 of the Cr.P.C., 1973.
[3] Section 190 (1) (b) of the Cr.P.C., 1973.
[4] Section. 200 of the Cr.P.C., 1973.
[5] Section 202 of the Cr.P.C., 1973.

7. After the aforestated compliance, if the magistrate isn't satisfied, the complaint is dismissed.[6]

8. If the magistrate is satisfied that statements made constitute an offence, process is issued and warrants/summons are sent out to the accused directing him/her to appear before the magistrate.[7]

- In the instant case, as explained above, the learned CJM issued process u/s. 204 after examining the complainant & its witnesses u/s. 200.

- It was argued by the advocates for the appellant, senior counsel Jaideep Gupta that since the accused was residing beyond the territorial jurisdiction of the concerned CJM, it was his statutory duty pursuant to section 202 of the code to postpone the issuance of process and have an investigation by the police or inquire into the matter himself.

- They emphasised the 2005 Criminal Procedure Code amendment where section 202 was amended and a provision for postponement of issuance of process was inserted.

The relevant portion has been quoted herein:

This extract is taken from Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638: (2015) 1 SCC (Cri) 479: 2014 SCC Online SC 261 at page 644

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" be 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

[6] Section 203 of the Cr.P.C., 1973.

[7] Section 204 of the Cr.P.C., 1973.

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.

On the contrary, *Advocate Nidhi for the respondents* contended that an inquiry had already been conducted by the learned magistrate before issuing the process. The fact that the postponement wasn't done isn't enough to quash the proceedings.

- The underlying contention from the advocate for respondent was that, u/s. 200 of the code, the statements of the complainant & witnesses were already recorded under oath and, as a result, the offence was made out. ***Therefore, another investigation/inquiry just for the sake of 202 compliance would be futile and would defeat the intent of legislature as well.***

- Examining the ***definition of inquiry u/s. 2(g) of the code,*** the Hon'ble Supreme Court concluded that the definition of inquiry is so broad that it also includes "examination done u/s. 200", thereby fulfilling the requirement of inquiry u/s. 202 and accordingly dismissing the appeal.

The relevant portion has been quoted herein;

13. *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 had 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.

❖ ***TOOLS OF INTERPRETATION***

The Hon'ble Supreme Court applied two rules of interpretation, *Golden Rule & Mischief Rule,* although not in their entirety. The apex court understood & appreciated the intent of legislature with which section *202 was amended in 2005.*

If the word *"shall"* in section 202 were to be interpreted according to the *Literal Rule,* in

every case where the accused was residing outside the territorial jurisdiction of concerned magistrate, *postponement of issuance would've been compulsory* for further investigation/inquiry even if the offence would've already been made out against the accused post section 200. This would defeat the purpose of legislation by making the process unnecessarily time-consuming and making it futile. ***Therefore, Literal rule wasn't appropriate in the instant case.***

Therefore, keeping in mind the intent of legislature, the apex court concluded that even though the word *"shall"* generally means mandatory, it could also be directory in nature. *Therefore, it is paramount to look at the facts of the case and the provision of law together.* In the case above, the CJM complied with section 200 of the code and held an *"inquiry"* as well. This was enough to constitute an offence against the accused. An additional inquiry/investigation just for the sake of 202 compliance would defeat the purpose of legislature by prolonging the process. ***Therefore, the Golden Rule was appropriate in this case.***

It is the opinion of author that the apex court also applied the Mischief Rule in the instant case. In a lot of cases, offences are made out directly after reading the complaint filed u/s.190 along with the compliance of 200. Therefore, 202 amendment compliance seems redundant in those cases. However, there exists a mischief in the legislation which allows for unnecessary prolonging of the complaint verification which furthers the mischief. Considering this problem, ***the apex court applied the mischief rule along with the golden rule, thereby altering the meaning of word "shall" from mandatory to directory in the aforestated scenarios.***

❖ *ANALYSIS OF INTERPRETATION DONE BY THE SUPREME COURT*

The author completely agrees with the interpretation done by the apex court in the instant case. The sole purpose of *Code of Criminal Procedure amendment, 2005* was to protect the interests of absent accused due to a large number of false cases being filed against the accused just for the sake of harassment.

However, the author believes that *golden rule of interpretation is evident* from plain reading of the judgement, but it is only when someone makes an effort to decode the afore-mentioned provisions of the laws involved that they understand that *mischief rule is put into operation* to reach the conclusion as well.

❖ *CONCLUSION*

Legislations will always be vital for growth and development of the society. Therefore, it is imperative to have a legitimate authority to periodically interpret these legislations. However, they are not expected to interpret arbitrarily and therefore there have been certain principles which have evolved out of the continuous exercise by the Courts.

These rules of interpretation play an important role during these times. Interpretation serves as the art of finding out the true sense of an enactment by giving the words of the enactment their natural and ordinary meaning.

In this paper, the author examined the landmark judgement of ***Vijay Dhanuka V/s. Najima Mamtaj wherein the Hon'ble***

Supreme Court laid down a clear interpretation of sections 200-204 of the code which is followed till date. These sections are so important that a trial in a complaint case can not begin without their compliance.

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