

“200. Examination of Complainant. - a Vs.

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Court : Punjab and Haryana

Decided On : Jul-10-2013

Appellant : “200. Examination of Complainant. - a

Judgement :

CRM not M-21614 of 2012 (O&M) -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH (226) CRM not M-21614 of 2012 (O&M) Date of decision:

10. 07.2013.

Tariq KhanPetitioner Versus State of Haryana and anotherRespondents
CORAM: HON'BLE MRS.JUSTICE SABINA Present: Mr.M.S.Pandey, Advocate for the petitioner.

Mr.Gaurav Dhir, DAG, Haryana.

None for respondent No.2.

**** SABINA, J.

By way of present petition under Section, 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.in short).petitioner has challenged summoning order dated 22.01.2010 (Annexure P-5) on the allegation that the said order had been passed by the Trial Court without recording any preliminary evidence of the complainant in support of the complaint.

None has appeared on behalf of respondent No.2.

Summoning order dated 22.01.2010 reads as under:- Complaint received by way of CRM not M-21614 of 2012 (O&M) -2- assignment.

It be checked and registered.

not notice be issued to accused 23.03.2010 on filing of PF and copy of plaint etc.

Sections 200, 201 and 202 Cr.P.C.read as under:- 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.

201. Procedure by Magistrate not competent to take cognizance of the case.

- If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, (a) If the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect; (b) If the complaint is not in writing, direct the CRM not M-21614 of 2012 (O&M) -3- complainant to the proper Court.

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 or Sessions; 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 witness 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 Court on an officer in charge of a police station except the power to arrest without warrant.

CRM not M-21614 of 2012 (O&M) -4- Thus, as per the above provisions, a Magistrate taking cognizance of an offence on complaint shall examine on oath the complainant and the witnesses present, if any, and thereafter, pass the summoning order.

In case, the Magistrate is not competent to take cognizance of the complaint, he shall return the same for presentation to the proper Court with an endorsement to that effect.

In case the Magistrate is competent to take cognizance of the offence, then he shall proceed as per Section 202 Cr.P.C.However, in the present case, the Magistrate without recording the preliminary evidence of the complainant in

support of the complaint, has proceeded to issue notices to the accused.

No reasons have been given as to why recording of the statements of the complainant or its witnesses had been dispensed with.

In these circumstances, the impugned order dated 22.01.2010 is set aside.

Magistrate is directed to proceed with the complaint further in accordance with law.

(SABINA) JUDGE July 10, 2013 sandeep sethi

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