VERDICTUM.IN

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10548 of 2018

CNR No. BRHC010946512018

Arising Out of PS. Case No.-2259 Year-2017 Thana- VAISALI COMPLAINT CASE District- Vaishali

==========

M/s Juggernaut Books Pvt. Ltd a company registered under the provisions of the Indian Company Act having its office at 4th Floor, 118, KS House, Shahpur Jat, New Delhi-110049 through Its Managing Director, Ms. Rudrani Sarkar Daughter of Sri Aveek Sarkar, C/o 4th Floor, 118, KS House, Shahpur Jat P.S.- Lodhi Road, New Delhi- 110049.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Amit Kumar, S/o Sh Raghuvansh Narayan Singh, Gangabrij Colony, Quarter No. C/51, Hajipur, P.S.- Industrial Area, District- Vaishali.

... ... Opposite Party/s

==========

Appearance :

For the Petitioner/s : Mr. Ashish Giri, Sr. Adv.
Mr. Sumit Kumar Jha, Adv.
Mr. Pranav Kumar, Adv.

For the State : Mr. Ramchandra Sahani, APP

For Opposite Party No. 2: None appears

==========

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

CAV JUDGMENT

Date : 03-11-2026

Heard the parties.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the orders dated 07-10-2017 and 09-10-2017 passed by the learned Additional Chief Judicial Magistrate-II, Hajipur, Vaishali in Complaint Case No. 2259(C) of 2017, whereby cognizance has been taken against the petitioner for the offences

WEB COPY

VERDICTUM.IN

punishable under Sections 295-A, 500, 501 and 502 of the Indian Penal Code and summons have been directed to be issued.

FACTS OF THE CASE:

3. The petitioner is a company incorporated under the provisions of the Companies Act and is engaged in the business of publishing books. The present prosecution arises out of a complaint filed by opposite party no. 2, namely, Amit Kumar, before the learned Chief Judicial Magistrate, Hajipur, Vaishali, registered as Complaint Case No. 2259(C) of 2017 on 06-9-2017.

4. The complainant has described himself as a follower of Swami Ramdev. It is alleged in the complaint that on 01-9-2017, in the evening, while he was in the market, he noticed a book bearing the photograph of Swami Ramdev, titled *"Godman to Tycoon: The Untold Story of Swami Ramdev"* (for brevity hereinafter referred to as 'book'). Since the complainant was a follower of Swami Ramdev, he purchased the book and started reading it after returning home.

5. According to the complainant, upon reading a few pages of the book, he realised that certain aspects relating to

WEB COPY

VERDICTUM.IN

defame him. It has been alleged that the book indirectly made Swami Ramdev responsible for the demise of Guru Shankaranand, Swami Yogananda and Rajiv Dixit. It has been further alleged that Swami Ramdev had been depicted as an illiterate son of a poor farmer and that certain statements concerning his wearing of *gerua vastra* had hurt the sentiments of the Hindu religion. The complainant also alleged that the book was written with an intention to defame Swami Ramdev and to spread religious frenzy among his followers. It has also been alleged that the contents of the book hurt the sentiments of the numerous followers of Swami Ramdev.

6. Pursuant thereto, the statement of the complainant was recorded on 12-9-2017. Thereafter, two other witnesses, namely, Prakash Kumar Mishra and Abhishek Kumar, were examined on 15-9-2017 and 18-9-2017 respectively. By order dated 07-10-2017, the learned Magistrate took cognizance of the offences punishable under Sections 495-A, 500, 501 and 502 of the Indian Penal Code. Subsequently, by order dated 09-10-2017, the provision of Section 495-A was substituted by Section 295-A of the Indian Penal Code, treating the earlier reference to Section 495-A as a typographical error. The proceedings were accordingly directed to continue for the

WEB COPY

VERDICTUM.IN

offences under Sections 295-A, 500, 501 and 502 of the Indian Penal Code.

7. Being aggrieved by the aforesaid orders and the consequential criminal proceedings, the petitioner has approached this Court, invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

Submissions on Behalf of the Petitioner

8. Learned Senior Counsel Mr. Ashish Giri appearing on behalf of the petitioner submits that the prosecution, even if the allegations made in the complaint are accepted in their entirety, is not maintainable in law. It is contended that the complainant has instituted the complaint alleging defamation of a person other than himself, namely, Swami Ramdev, whereas no imputation has been made against the complainant personally.

9. Learned Senior Counsel submits that Section 199(1) of the Code of Criminal Procedure specifically provides that no Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code except upon a complaint made by a “person aggrieved” by the offence. Sections 500, 501 and 502 of the Indian Penal Code fall within Chapter XXI. The statutory requirement is mandatory, and a

WEB COPY

VERDICTUM.IN

person who merely claims to be a follower or disciple of the person allegedly defamed cannot institute a criminal prosecution in his individual capacity for the alleged defamation of that person. In support of the aforesaid submission, learned Senior Counsel places reliance upon the judgment of the Hon'ble Supreme Court in the case of ***G. Narasimhan, G. Kasturi and K. Gopalan vs. T.V. Chokkappa,*** reported in ***(1972) 2 SCC 680***. It is submitted that the Hon'ble Supreme Court has held that the requirement of a complaint by a "person aggrieved" is mandatory and that on a complaint by a person who does not fall within the expression "person aggrieved" cannot sustain a prosecution for defamation.

10. Learned Senior Counsel further relies upon ***Dhirendra Nath Sen and Another v. Rajat Kanti Bhadra, (AIR 1970 Cal 216)***, *and* ***Ganesh Anand Chela v. Swami Divyanand, (1980) 17 DLT 492*** to submit that a disciple or follower cannot claim to be a "person aggrieved" merely because an alleged defamatory statement has been made against his spiritual or religious head. The injury to the feelings of a disciple on account of alleged defamation of his *Guru* does not confer him upon the legal competence to prosecute the alleged offender for defamation.

WEB COPY

VERDICTUM.IN

11. It is further submitted that the complainant has not alleged that the book contains any imputation against a definite and identifiable class of persons. The allegations in the complaint are directed essentially against Swami Ramdev. A general assertion that the book has hurt the sentiments of his followers or members of the Hindu community cannot bring the complainant within the scope of Explanation-2 to Section 499 of the Indian Penal Code.

12. Learned Senior Counsel also submits that the cognizance taken for the offence under Section 295-A of the Indian Penal Code is contrary to the mandatory requirement of Section 196(1)(a) of the Code of Criminal Procedure. Under the said provision, no Court can take cognizance of an offence punishable under Section 295-A of the Indian Penal Code except with the previous sanction of the Central Government or State Government. It is submitted that no such sanction was obtained before the cognizance was taken in the present case.

13. Learned Senior Counsel has also raised the question of non-compliance with Section 202 of the Code of Criminal Procedure, submitting that the petitioner is situated outside the territorial jurisdiction of the learned Magistrate and that the mandatory inquiry contemplated under the said

WEB COPY

VERDICTUM.IN

provision was not undertaken before issuance of process. Reliance was placed upon ***Udai Shankar Awasthi v. State of U.P., (2013) 2 SCC 435*****, and** ***Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528.***

14. Learned Senior Counsel further submits that the petitioner-company, being a juristic entity, cannot be attributed the requisite mens rea for the offence of defamation in the absence of any material showing an intention on its part to harm the reputation of Swami Ramdev. Mere publication of the book, without any material indicating such intention, would not be sufficient to fasten criminal liability upon the petitioner. Reliance was placed on ***Raymond Ltd. v. Rameshwar Das P. Ltd., 2013 SCC OnLine Del 1328.***

15. It is lastly submitted that the complaint is vague and does not identify with precision the portions of the book alleged to be defamatory or the religious beliefs alleged to have been insulted. The continuation of the criminal proceedings against the petitioner in the circumstances, would amount to an abuse of the process of the Court.

Submissions on Behalf of the State

16. Learned Additional Public Prosecutor appearing on behalf of the State has been heard. The State has

WEB COPY

VERDICTUM.IN

opposed the prayer for quashing and has supported the order passed by the learned Magistrate. No one has appeared on behalf of opposite party no. 2 despite opportunities having been granted.

ISSUES FOR DETERMINATION

Upon consideration of the pleadings, the materials available on record and the submissions advanced on behalf of the parties, the following issues arise for determination:

(i). Whether the present case is fit for exercise of the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure?

(ii). Whether a complainant who claims to be a follower and disciple of Swami Ramdev can be treated as a "person aggrieved" within the meaning of Section 199(1) of the Code of Criminal Procedure so as to maintain a complaint for the alleged offences under Sections 500, 501 and 502 of the Indian Penal Code, when the alleged imputations are directed against Swami Ramdev and not against the complainant?

(iii). Whether cognizance of the offence under Section 295-A of the Indian Penal Code could have been taken in the absence of previous sanction, as required under Section 196(1)(a) of the Code of Criminal Procedure, and whether the

WEB COPY

VERDICTUM.IN

allegations made in the complaint disclose the essential ingredients of the offence under Section 295-A of the Indian Penal Code?

(iv). Whether the mandatory procedure contemplated under Section 202 of the Code of Criminal Procedure was complied with before issuance of process against the petitioner, and whether the order taking cognizance reflects the requisite application of judicial mind?

FINDINGS ON THE ISSUES:

Issue No. (i) Whether the present case is fit for exercise of the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure?

Before examining the individual statutory provisions and the allegations made in the complaint, it would be appropriate to consider the scope of the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure. The inherent jurisdiction of the High Court is intended to give effect to any order under the Code, to prevent abuse of the process of any Court, and otherwise to secure the ends of justice. At the same time, the existence of such power cannot be denied where the allegations made in a complaint, even if accepted in their entirety, do not constitute of an offence or where the

WEB COPY

VERDICTUM.IN

continuation of the proceedings would amount to an abuse of the process of the Court.

In ***State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426***, the Hon'ble Supreme Court, in paragraph-102, has illustrated the categories of cases in which the inherent power of the High Court may be exercised to quash criminal proceedings. The first category relates to cases where the allegations made in the First Information Report or complaint, even if taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. The other categories include cases where the allegations and the accompanying material do not disclose the commission of an offence, or where the criminal proceeding is manifestly attended with *mala fide* or is maliciously instituted with an ulterior motive.

The principles laid down in **Bhajan Lal case (supra)** make it clear that the High Court is not required to permit a criminal prosecution to continue merely because an order of cognizance has been passed. Where the complaint itself discloses a statutory bar to the prosecution or where the allegations do not satisfy the essential ingredients of the offence alleged, the High Court is justified in exercising its inherent

WEB COPY

VERDICTUM.IN

jurisdiction.

In the present case, the challenge raised by the petitioner is not founded merely upon a disputed question of fact or upon a defence which would require appreciation of evidence at trial. The petitioner has raised issues relating to the statutory competence of the complainant to institute proceedings for defamation and the absence of previous sanction for taking cognizance under Section 295-A of the Indian Penal Code. These are questions which go to the very maintainability of the prosecution and can be examined on the basis of the complaint and the orders impugned.

This Court is, therefore, of the view that the present case warrants examination under Section 482 of the Code of Criminal Procedure, as the petitioner has raised substantial questions relating to statutory bars to cognizance and the absence of essential ingredients of the offences alleged.

Issue No. (ii) Whether a complainant who claims to be a follower and disciple of Swami Ramdev can be treated as a "person aggrieved" within the meaning of Section 199(1) of the Code of Criminal Procedure so as to maintain a complaint for the alleged offences under Sections 500, 501 and 502 of the Indian Penal Code, when the alleged

WEB COPY

VERDICTUM.IN

imputations are directed against Swami Ramdev and not against the complainant?

The principal objection raised on behalf of the petitioner is that the complainant is not the person who is alleged to have been defamed. The complaint itself proceeds on the footing that the book has defamed Swami Ramdev and that the complainant, being his follower, has been hurt by the contents of the book.

Section 199(1) of the Code of Criminal Procedure provides as follows:

> *"(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence :Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf."*

A plain reading of the aforesaid provision makes it clear that the restriction imposed therein is mandatory. The expression "person aggrieved" is not a mere formality. It is a condition prescribed by the legislature for taking cognizance of offences punishable under Chapter XXI of the Indian Penal Code, which includes Sections 499 to 502.

WEB COPY

VERDICTUM.IN

The object of the provision is to ensure that the prosecution for defamation is initiated by the person whose reputation is alleged to have been harmed, subject to the exceptions expressly provided by the statute. The provision does not permit any person, merely on account of his interest in the subject matter or his personal feelings, to institute a criminal prosecution for the alleged defamation of another person.

The Hon'ble Supreme Court, in the case of ***G. Narasimhan, G. Kasturi and K. Gopalan vs. T.V. Chokkappa*** (supra), while considering the scope of the corresponding provision under the old Act, has held that the provision is mandatory and that cognizance of an offence of defamation can be taken only upon a complaint made by a "person aggrieved" by the offence. The Hon'ble Supreme Court further clarified that where a well-defined class is defamed, a particular member of that class may maintain a complaint even if the defamatory imputations do not mention him by name. However, the class must be definite and identifiable and the imputation must be relatable to that class. A general or indeterminate collection of persons cannot be treated as a definite class for this purpose.

The aforesaid principle has direct reliance to the present case. The complaint does not allege that the book contains any

WEB COPY

VERDICTUM.IN

imputation concerning the complainant, Amit Kumar. The allegations are directed towards the portrayal of Swami Ramdev in the book. The complainant has described himself as a follower of Swami Ramdev and has stated that the contents of the book have hurt his feelings and the sentiments of other followers. The question, therefore, is whether the mere fact that the complainant is a follower or disciple of the person allegedly defamed is sufficient to make him a "person aggrieved" within the meaning of Section 199(1) of the Code.

In ***Dhirendra Nath Sen v. Rajat Kanti Bhadra, AIR 1970 Cal 216,*** the Calcutta High Court considered a similar question. The complainant in that case had described himself as a member of an *Ashram* and had instituted a complaint alleging defamation of the spiritual head of the *Ashram*. It was contended that since the complainant was a disciple of the spiritual head, the alleged lowering of the reputation of the spiritual head also lowered the reputation of the complainant. The High Court rejected the said contention and held that the mere fact that the feelings of the complainant had been injured in consequences of a defamatory statement made against his religious head did not afford him a ground in law to prosecute the accused for defamation. It was held that where the alleged

WEB COPY

VERDICTUM.IN

defamation was of the spiritual head of a community, an individual member of that community did not become a "person aggrieved" merely on the ground of his association with the spiritual head.

The aforesaid principle was considered and applied by the Delhi High Court in ***Ganesh Anand Chela v. Swami Divyanand, (1980) 17 DLT 492.*** In that case also, the complainant was a disciple of a spiritual head and alleged that the imputations against his *Guru* had also brought the *Guru's* disciples into contempt and ridicule. The Court held that the complainant had not established that the imputations were directed against him personally or that he was the person aimed at. The fact that he shared grievance with other disciples could not make him a "person aggrieved" within the meaning of Section 199(1) of the Code.

The Court in the case of ***Ganesh Anand Chela*** (supra) specifically observed that the grievance of a disciple arising from an alleged defamation of his *Guru*, even if shared by other disciples, cannot by itself confer upon such disciples the legal status of a "person aggrieved". The decision is particularly relevant to the facts of the present case, where the complainant has instituted the prosecution on the ground that he is a follower

WEB COPY

VERDICTUM.IN

of Swami Ramdev and that the book has allegedly defamed his spiritual leader.

The Bombay High Court in ***Maulik Kotak v. State of Maharashtra,*** **Criminal Writ Petition No. 64 of 2003** and connected matters, considered complaints instituted by persons claiming to be associated with the *Swadhyaya Pariwar* on account of alleged defamatory publications concerning its spiritual heads. The Court, after considering the law laid down in **G. Narasimhan case (supra)** and other decisions, held that persons professing membership of a spiritual or religious movement could not maintain complaints for alleged defamation of its leaders merely on the basis of their association with the movement. The Court also emphasized that the group sought to be relied upon must be determinate and identifiable. The complaints were accordingly quashed.

The aforesaid decision is relevant because the complainants therein, like the complainant in the present case, sought to maintain criminal proceedings on the basis of their association with a spiritual movement and the alleged defamation of its leaders. The Court held that such association, without a legally recognized basis to claim that the imputation was directed against the complainant or a definite and

WEB COPY

VERDICTUM.IN

identifiable class of which he was a member, would not satisfy the requirement of Section 199(1) of the Code.

In the present case, the allegations in the complaint are specific in one aspect: The person whose reputation is alleged to have been harmed is Swami Ramdev. The complaint states that Swami Ramdev has been depicted in a particular manner and that certain statements concerning his life and activities have been made in the book. The complaint does not allege that the complainant himself has been referred to in the book or that any imputation has been made concerning his character, conduct or reputation.

The complainant's assertion that the book has hurt the sentiments of numerous followers of Swami Ramdev does not, by itself, alter the nature of the alleged imputation. The alleged statements are directed against Swami Ramdev and not against his followers as a class. The complaint does not identify any particular, definite and ascertainable group of persons against whom the alleged imputations have been made.

The reference to the followers of Swami Ramdev is general in nature. The complaint does not disclose the composition, identity or definite boundaries of such a group, nor does it demonstrate that the alleged statements in the book were

WEB COPY

VERDICTUM.IN

directed against that group as such. The mere fact that several persons may share similar sentiments or may feel aggrieved by a statement concerning a person whom they follow does not make them a determinate class for the purpose of Explanation-2 to Section 499 of the Indian Penal Code.

It is also necessary to clarify that the provision does not mean that an individual member can never maintain a complaint where a well-defined class is defamed. The principle laid down in **G. Narasimhan** (supra) recognizes such a right where the class is definite and identifiable and the imputation is directed against that class. However, the present complaint does not satisfy that requirement. The alleged imputation is against Swami Ramdev personally, and the complainant seeks to prosecute the petitioner on the basis of his relationship as a follower.

The complainant cannot, therefore, step into the position of the person allegedly defamed merely because he is a disciple or a follower of that person. The statutory requirement under Section 199(1) cannot be enlarged on the basis of personal sentiments or association. The law requires that the complainant must be a “person aggrieved” by the alleged offence.

In view of the aforesaid discussion, this Court finds that

WEB COPY

VERDICTUM.IN

the complainant does not fall within the expression "person aggrieved" under Section 199(1) of the Code of Criminal Procedure. Consequently, cognizance of the offences under Sections 500, 501 and 502 of the Indian Penal Code on the complaint instituted by opposite party no. 2 is not sustainable in law.

Issue No. (iii) Whether cognizance of the offence under Section 295-A of the Indian Penal Code could have been taken in the absence of previous sanction, as required under Section 196(1)(a) of the Code of Criminal Procedure, and whether the allegations made in the complaint disclose the essential ingredients of the offence under Section 295-A of the Indian Penal Code?

The next question which arises for consideration is whether the learned Magistrate could have taken cognizance of the offence under Section 295-A of the Indian Penal Code without obtaining the previous sanction contemplated under Section 196(1)(a) of the Code of Criminal Procedure.

Section 196(1)(a) of the Code of Criminal Procedure provides that no Court shall take cognizance of an offence punishable under Section 295-A of the Indian Penal Code except that the previous sanction of the Central Government or

WEB COPY

VERDICTUM.IN

the State Government. The language employed in the provision is clear and admits of no ambiguity. The requirement of previous sanction is a condition precedent to the Court taking cognizance of an offence under Section 295-A of the Indian Penal Code. It is not a procedural formality which may be dispensed with or cured at a subsequent stage. In the absence of a requisite previous sanction, the Court is not competent to take cognizance of the offence.

The Hon'ble Supreme Court, in ***Manoj Rai v. State of Madhya Pradesh (1999) 1 SCC 728***, considered a case in which prosecution had been initiated for an offence under Section 295-A of the Indian Penal Code. The Court recorded that the State had fairly stated that no sanction had been granted under Section 196(1) of the Code of Criminal Procedure for prosecuting the appellants under Section 295-A of the Indian Penal Code. In view of the absence of sanction, the Hon'ble Supreme Court allowed the appeal and quashed the proceedings.

In the present case, the record does not disclose that any previous sanction of the Central Government or the State Government was obtained before cognizance was taken for the offence under Section 295-A of the Indian Penal Code. The order dated 07-10-2017 initially referred to Section 495-A of the

WEB COPY

VERDICTUM.IN

Indian Penal Code. By the subsequent order dated 09-10-2017, the learned Magistrate substituted the provision with Section 295-A, treating the earlier reference as a typographical error.

The correction made by the learned Magistrate on 09-10-2017 does not cure the absence of the statutory sanction. Once the provision of Section 295-A was invoked, the requirement of previous sanction under Section 196(1)(a) of 'the Code' became applicable. The record does not show that such sanction was obtained before the Court proceeded to take cognizance of the offence.

There is another aspect of the matter. Even if the requirement of sanction is considered separately, the allegations made in the complaint do not disclose the essential ingredients of Section 295-A of the Indian Penal Code. Section 295-A of the Indian Penal Code penalizes deliberate and malicious acts intended to outrage the religious feelings of any class of citizens by insulting its religion or religious beliefs. The provision does not make every statement which may hurt the religious feelings of an individual or a group of persons an offence. The deliberate and malicious intention to outrage the religious feelings of a class is an essential ingredient of the offence.

Relying on an earlier judgment delivered in ***Ramji Lal***

WEB COPY

VERDICTUM.IN

Modi v. State of Uttar Pradesh, AIR 1957 SC 620, the Hon'ble Supreme Court in the case of ***Mahendra Singh Dhoni v. Yerraguntla Shyamsundar, (2017) 7 SCC 760***, held and observed that Section 295-A does not penalize every act of insult or attempt to insult the religion or religious beliefs of a class of citizens. It penalizes only those acts which are committed with the deliberate and malicious intention of outraging the religious feelings of that class. The Court further held that an insult offered unwittingly or carelessly, without the requisite intention, would not constitute an offence under the provision.

Applying the aforesaid principles to the present case, it is evident that the allegations in the complaint essentially relate to the manner in which the life, background and activities of Swami Ramdev have been narrated in the book.

However, the complaint does not disclose with the requisite particulars which religious belief of a class of citizens has been insulted, or how the statements complained of were made with a deliberate and malicious intention to outrage the religious feelings of that class. The allegation that the book has hurt the sentiments of followers of Swami Ramdev is not, by itself, sufficient to constitute an offence under Section 295-A of

WEB COPY

VERDICTUM.IN

the Indian Penal Code.

The distinction between an alleged defamatory statement concerning an individual and an insult to the religion or religious beliefs of a class of citizens is required to be kept in view. The complaint primarily alleges that the book has harmed the reputation of Swami Ramdev. The alleged description of his background and the references to his life and activities may form the subject matter of grievances on his behalf, but such allegations do not automatically become an offence under Section 295A of the Indian Penal Code. The complaint also does not identify any definite religious belief which has been insulted by the statements concerning *Gerua Vastra*. A general assertion that the Hindu religion has been hurt, without identifying the religious belief allegedly insulted and without disclosing the deliberate and malicious intention required by the provision, cannot satisfy the ingredients of Section 295-A of the Indian Penal Code.

In view of the absence of previous sanction under Section 196(1)(a) of the Code of Criminal Procedure, the learned Magistrate could not have taken cognizance of the offence under Section 295-A of the Indian Penal Code. The cognizance taken is, therefore, completely illegal. Independently thereof, the

WEB COPY

VERDICTUM.IN

allegations in the complaint also do not disclose the essential ingredients of the said offence.

Issue No. (iv) Whether the mandatory procedure contemplated under Section 202 of the Code of Criminal Procedure was complied with before issuance of process against the petitioner, and whether the order taking cognizance reflects the requisite application of judicial mind?

Learned senior counsel for the petitioner has also challenged the proceedings on the ground that the petitioner is situated beyond the territorial jurisdiction of the learned Magistrate and that the mandatory inquiry contemplated under Section 202 of the Code of Criminal Procedure was not conducted before issuance of process.

In ***Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638***, the Hon'ble Supreme Court has held that the inquiry contemplated under Section 202 is mandatory where the accused resides beyond the territorial jurisdiction of the Magistrate. The Hon'ble Supreme Court, in ***Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528***, has also emphasized that the requirement of an inquiry under Section 202 is not a mere formality. The Magistrate must apply his mind

WEB COPY

VERDICTUM.IN

to the complaint, the statements recorded and the inquiry conducted, and must be satisfied that there is sufficient ground for proceeding against the accused. The process of summoning an accused is, therefore, a serious matter and cannot be undertaken mechanically.

In the present case, the petitioner is a company having its office at New Delhi, outside the territorial jurisdiction of the learned Magistrate at Hajipur. The record, however, shows that the complainant was examined on 12-09-2017 and the two other witnesses, namely, Prakash Kumar Mishra and Abhishek Kumar, were examined on 15-09-2017 and 18-09-2017 respectively. The order taking cognizance also makes reference to the statements of the complainant and the inquiry witnesses and to the book in question.

In view of the aforesaid material, it would not be appropriate to hold that no inquiry whatsoever was conducted under Section 202 of 'the Code' merely because no separate police investigation was ordered or because a separate order expressly referring to Section 202 is not made available. In ***Vijay Dhanuka*** **case (supra)**, the Hon'ble Supreme Court has made it clear that examination of the complainant and the witnesses by the Magistrate may itself constitute the inquiry

WEB COPY

VERDICTUM.IN

contemplated under Section 202.

Accordingly, the challenge on the ground that there was no inquiry at all under Section 202 of 'the Code' cannot be accepted in the absolute form in which it has been advanced. However, compliance with Section 202 does not dispense with the obligation of the Magistrate to examine whether the complainant is legally competent to institute the complaint and whether the statutory requirements for taking cognizance of the offences alleged have been fulfilled. An inquiry under Section 202 of 'the Code' cannot cure the absence of previous sanction under Section 196(1)(a), nor can it confer upon the complainant a status which he does not possess under Section 199(1) of 'the Code'.

CONCLUSION:

17. Having considered the facts of the case, the allegations made in the complaint, the orders impugned and the statutory provisions governing the offences alleged, this Court finds that the prosecution against the petitioner suffers from fundamental legal infirmities.

18. Accordingly, this Court is of the considered view that allowing the prosecution to continue against the petitioner would amount to permitting a criminal proceeding to

WEB COPY

VERDICTUM.IN

proceed despite the absence of mandatory statutory conditions for taking cognizance. The continuation of such proceedings would serve no useful purpose and would be an abuse of the process of the Court.

19. Thus, to prevent abuse of the process of the Court, and otherwise to secure the ends of justice, this application is allowed.

20. Accordingly, the orders dated 07-10-2017 and 09-10-2017 passed by the learned Additional Chief Judicial Magistrate-II, Hajipur, Vaishali, in Complaint Case No. 2259(C) of 2017, and all consequential proceedings arising therefrom concerning the petitioner, are hereby quashed.

(Alok Kumar Sinha, J)

kundan/-

AFR/NAFR	AFR
CAV DATE	28.10.2026
Uploading Date	03.11.2026
Transmission Date	03.11.2026

WEB COPY