

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1395 of 2022

Dasrathbhai Narsangbhai Chaudhary
@ Dasrath Chaudhary & Another
Versus
The State of West Bengal & Another

For the Petitioners : Mr. Apalak Basu, Adv.
Mr. Debayan Ghosh, Adv.

For the Opposite Party No. 2 : Mr. Manojit Bhattacharya, Adv.
Ms. Sumitra Bhattacharya, Adv.

Heard on : 13.09.2024

Judgment on : 04.10.2024

Ajay Kumar Gupta, J:

1. Petitioners being the accused persons have filed this Criminal Revisional application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 praying for quashing of the Complaint Case No. 180 of 2020 filed by the complainant making accusations under Sections 420/406/34 of the Indian Penal Code, 1860 against the company and its Directors, petitioners herein. The case is now pending before the Court of the Learned Judicial Magistrate, 1st Class, 6th Court, Sealdah, 24 Parganas (South).

2. Short facts, leading to filing of this present Criminal Revisional application, are summarised as under: -

2a. The Opposite Party No. 2 being the ex-employee of Safal Life Science (P) Ltd. (hereinafter referred to as 'the said company') filed a complaint before the Court of the Learned Judicial Magistrate alleging, *inter alia*, that the Opposite Party No. 2/complainant was employed by the Board of Directors of the aforesaid company on 31st day of March, 2017 upon issuing appointment letter. The complainant joined as a Chief Executive Officer with effect from 1st April, 2017 and his salary was fixed by the company @ Rs. 2,50,000/- per month plus additional 2% as Performance Bonus of the annual sale volume after deducting the income tax.

2b. The complainant worked there for the financial years 2017-2018 and 2018-2019 efficiently, sincerely and diligently and is entitled to receive a total Outstanding Salary and Performance Bonus after deducting the income tax including penalty to the tune of Rs. 1,47,64,833/- (Rupees One Crore Forty-Seven Lakh Sixty-Four Thousand Eight Hundred and Thirty-Three) only after deducting the salary and bonus already received during the period of working tenure. Despite such outstanding dues of salary and Performance Bonus, the accused company did not heed to pay. Notice was sent through e-mail to the accused company on 2nd August, 2020 but in vain. The opposite party no. 2 had lodged a complaint before Ultadanga Police Station on 10.10.2020 with regard to non-payment of Salary and Performance Bonus but no action has been taken by the police against the accused persons for such non-payment of Outstanding Salary and Performance Bonus and commission of offences by way of committing criminal breach of trust and cheating upon the opposite party no. 2. Hence, the complainant has compelled to initiate a complaint case before the Learned Judicial Magistrate. After examination of the witnesses under Section 200 of the CrPC and being fully satisfied with the materials and documents, Learned Magistrate found prime facie case and issued process against the accused persons.

2c. On the other hand, petitioners have disputed and denied the allegations of the complainant. It is specifically contended that the petitioner nos. 1 and 2 were Directors of the Safal Life Science (P) Ltd. at the alleged period of work but now they are no longer Directors of the said company. Both are residing in the addresses given in the cause title which fall outside the jurisdiction of the Learned Judicial Magistrate, 1st Class, 6th Court, Sealdah, 24 Parganas (South). But, the Learned Magistrate, without holding enquiry under Section 202 of the CrPC, took cognizance under Sections 406/34 of the Indian Penal Code, 1860 on 22nd February, 2022 and thereby issued summons upon the petitioners which is *ex facie* illegal and unlawful and same ought to be set aside by this Court for non-compliance of mandatory provision as enshrined in the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.PC').

2d. It is totally absurd and unbelievable that how complainant can claim Outstanding Salary and Performance Bonus of Rs. 1,47,64,833/- (Rupees One Crore Forty-Seven Lakh Sixty-Four Thousand Eight Hundred and Thirty-Three) only after working for a period of three long years. All payments have been made to the employee during his service period. There are no dues with the company. It is unimaginable to accept that an employee would have

been worked for such long period without Salary and Performance Bonus.

2e. According to the petitioners, they were erstwhile Directors holding shares in the 25:75 ratio in the said company. On 27.03.2019, the petitioners sold all their shares of the company to (1) Newtronic Lifecare Equipment Private Limited, (2) Shri Navinbahi Manilal Mehta and (3) Shri Jignesh Navinchandra Mehta by way of executing a Memorandum of Undertaking dated 27.03.2019. That subsequent to transfer of all the shares by the petitioners in the company stood sold and transferred to the aforementioned purchasers.

2f. Shri Navinbhai Manilal Mehta and Shri Jignesh Navinchandra Mehta are the new Owners and Directors of the company and the same will be reflected from the Company Master Data of Safal Life Science (P) Ltd. as obtained from the online portal of Ministry of Corporate Affairs, Government of India.

2g. It is further contended that the petitioners had resigned from the Company stood effected on and from 16.03.2020. The relevant documents evidencing such resignation of the petitioners were obtained from the website of the Ministry of Corporate Affairs, Government of India. The new owners of the accused company were

made Directors of the company and their names appearing as Directors and same can be obtained in the Company Master Data from the website of Ministry of Corporate Affairs, Government of India. Hence, the complaint, made against the present petitioners, is not at all maintainable or applicable. The Learned Magistrate took cognizance under Sections 406/34 of the IPC and issued summons upon the petitioners without holding any proper enquiry under Section 202 of the CrPC though the allegations against the registered company, which is situated at Gujarat and two erstwhile Directors, Petitioners herein, are also resident of Gujarat beyond the territorial jurisdiction of the Learned Trial Court and had already sold their entire shares to third party. Therefore, they are not at all liable for the offence punishable under Sections 406/34 of the IPC. For the sake of argument, even if any dues lie with the company, it would be a civil dispute and the Hon'ble Apex Court, in catena of judgments, clarified that if the facts relating to the case involved civil disputes, Hon'ble Courts should not hesitate to quash the proceeding for ends of justice and the civil dispute cannot be converted to criminal case for realisation of the dues amount. Hence, petitioners filed this case before this Hon'ble High Court with a prayer for quashing of the proceedings and the same has come up before this Bench for its disposal.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. Mr. Basu, learned Advocate appearing on behalf of the petitioners argued mainly on five folds arguments.

3a. **Firstly**, it was submitted that the entire dispute between the employee and the employer with regard to alleged Outstanding Salary and Performance Bonus is out rightly a civil dispute, which cannot be converted to a criminal case to recover the money. Only on this issue, this Court can quash the proceeding as the case of the complainant is to the effect that the petitioners have not paid his Outstanding Salary and Performance Bonus. The allegation, pertaining to dispute relating to contract between the employer and employee and alleged dues of Salary and Performance Bonus, is purely civil in nature. Learned advocate placed reliance of the judgments to bolster his aforesaid submission as follows: -

i. Binod Kumar and Others Vs. State of Bihar and Another¹;

ii. Lalit Chaturvedi and Others Vs. State of Uttar Pradesh and Another²;

iii. Naresh Kumar & Anr. Vs. The State of Karnataka & Anr.³;

¹ (2014) 10 SCC 663 (paragraphs 16 and 18);

² 2024 SCC OnLine SC 171 (paragraphs 9 and 10);

³ Judgment dated 12.03.2024 passed in SLP (CRL.) No. 1570 of 2021 (paragraph 6);

*iv. V.K. Mittal & Ors. Vs. State of Jharkhand & Anr.*⁴;

*v. Sameer Kumar S/O. Sushilkumar Sharma Vs. State of Gujarat & 1 Other(s)*⁵.

3b. Secondly, it was submitted that the Learned Trial Court has no territorial jurisdiction to entertain the complaint filed by the complainant since the alleged place of commission of offence and place of his working was in Gujarat, which is situated outside the State of West Bengal. The actual cause of action arose in the State of Gujarat as the complainant worked in Gujarat which apparent from the complaint itself and the erstwhile Directors, petitioners herein, were/are residing in the State of Gujarat. So, the Learned Magistrate has no territorial jurisdiction to take up the matter and further wrongly issued summons upon the petitioners. Non-payment of salary or Performance Bonus by an employer to the employee is a civil dispute, which never tantamount to commission of offence of cheating or criminal breach of trust as alleged by the complainant.

3c. Thirdly, the summons were issued in violation of mandatory provision of Section 202 of CrPC. Under such mandatory provision,

⁴ 2009 SCC OnLine Jhar 1635; (2010) 1 AIR Jhar R 645; 2010 Cri LJ (NOC 620) 165;

⁵ Judgment dated 27.08.2021 passed by the Hon'ble High Court at Gujarat at Ahmedabad in R/Criminal Misc. Application No. 20134 of 2015.

the learned Court ought to have initiated enquiry against the accused persons, who reside beyond the territorial jurisdiction of the concerned Court. It was submitted that the Hon'ble Apex Court, in series of judgments, has clarified that the provision of Section 202 of the CrPC is mandatory in nature. The Learned Trial Court has to follow it before issuing summons under Section 204 of the CrPC. He further placed reliance of a judgment passed in **S.S. Binu Vs. State of West Bengal & Anr.**⁶, wherein the Hon'ble High Court has clarified that the provision u/s 202 of Cr.PC is mandatory when the accused resides beyond the territorial jurisdiction of the Learned Trial Court. Accordingly, he prays for quashing of the proceeding against the present petitioners for non-compliance of mandatory provision.

3d. Fourthly, it was further submitted that the accused persons were the Directors of the company. They are not accountable under Section 406 of the IPC as they sold all their shares to (1) Newtronic Lifecare Equipment Private Limited, (2) Shri Navinbahi Manilal Mehta and (3) Shri Jignesh Navinchandra Mehta by way of executing a Memorandum of Undertaking dated 27.03.2019. Therefore, accused company stood sold and transferred to the aforesaid purchasers. Now, they are no longer Directors of the accused company as such they cannot be held liable for any offence as alleged.

⁶ 2018 SCC OnLine Cal 16881: (2018) 3 RCR (Cri) 4: (2018) 5 CHN 562.

3e. Lastly, mere being Ex-Directors of the company, the petitioners cannot be roped in a criminal proceeding specifically when no specific or particular allegations made against them in the complaint. The allegation, made by the complainant against the present petitioners, is vague and insufficient to make them liable for offence punishable under Sections 406/420/34 of the IPC.

3f. At the end, it was submitted in view of the aforesaid facts, the complaint is a nature of frivolous, illegal and harassing one. Thus, it requires to be quashed so far as the petitioners are concerned. To support of his contention, he placed reliance on the following judgments: -

*i. Managing Director, Castrol India Limited Vs. State of Karnataka Another*⁷;

*ii. Sunil Bharti Mittal Vs. Central Bureau of Investigation*⁸.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:

4. Per contra, Mr. Bhattacharya, learned counsel appearing on behalf of the complainant/opposite party no. 2 raised strong objection of such prayer made by the Petitioners and further

⁷ (2018) 17 SCC 275;

⁸ (2015) 4 SCC 609.

submitted that the complainant had served the company for the financial years 2017-2018 and 2018-2019 efficiently, sincerely and diligently. Despite such service, the petitioners being the Directors of the company did not pay the Outstanding Salary and Performance Bonus after deduction of income tax, as the case may be, intentionally. They withheld his Outstanding Salary and Performance Bonus to the tune of Rs. 1,47,64,833/- (Rupees One Crore Forty-Seven Lakh Sixty-Four Thousand Eight Hundred and Thirty-Three) only after deducting the income tax, and amount already received during the working tenure. They have not paid in spite of repeated requests and issuance of demand notice.

4a. Having no other alternative, he has to file complaint before Ultadanga Police Station on 10.10.2020 but no action has been taken by the police against the accused persons for such non-payment of Outstanding Salary and Performance Bonus. Accordingly, he initiated a complaint against the Company as well as its Directors. They committed the offence punishable under Sections 420/406/34 of the IPC. After examining the P.W. 1 and P.W. 2 under Section 200 of the CrPC, the Learned Judicial Magistrate found prima facie case under Sections 406/34 of the IPC against the petitioners as such Learned Magistrate issued process against the present petitioners for offence

as alleged. Therefore, question of quashing of the instant proceeding does not arise. To prove the case of cheating and criminal breach of trust, a full-fledged trial is required to be commenced and completed to unearth the truth. Until and unless the trial is commenced and decided the case by the Learned Trial Court, this case should not be quashed. He prays for its dismissal.

DISCUSSIONS AND FINDINGS BY THIS COURT:

5. Heard the arguments of the rival parties and on perusal of the record as well as judgments referred by the learned counsel appearing on behalf of the petitioners, this Court finds it is admitted fact that the complainant, namely, Debasis Majumdar was an employee of the accused company, namely, Safal Life Science (P) Ltd. on and from 31st March, 2017 in view of the appointment letter issued by the company's Board of Directors. He was employed as Chief Executive Officer with effect from 1st April, 2017. He worked till the financial year 2018-2019. The claim of Debasis Majumdar is that he is entitled to get a total Outstanding Salary and Performance Bonus after deducting the income tax including penalty, as the case may be, to the tune of Rs. 1,47,64,833/- (Rupees One Crore Forty-Seven Lakh Sixty-Four Thousand Eight Hundred and Thirty-Three)

only. However, the said amount was not paid by the accused persons to the complainant as alleged.

6. In the present case, it has nowhere been stated that at the very inception there was any intention on behalf of the petitioners to cheat, which is a condition precedent for an offence under Section 420 of the Indian Penal Code, 1860. Furthermore, there is nothing in the complaint to show that the petitioners had dishonest and fraudulent intention at the time, when the opposite party no. 2 had been engaged or worked. It is further admitted facts that the company had paid Salary and Performance Bonus to the complainant. Dispute arises between the parties when the said company allegedly failed to pay the outstanding amount of Rs. 1,47,64,833/- (Rupees One Crore Forty-Seven Lakh Sixty-Four Thousand Eight Hundred and Thirty-Three) only as Salary and Performance Bonus and the said non-payment was for work done by the opposite party no. 2 as Chief Executive Officer in the company, namely, Safal Life Science (P) Ltd. These disputes are apparently civil in nature and that could be decided by Civil Court. No other prima facie ingredients were made out by the opposite party no. 2 in a Court complaint case regarding offence punishable under Section 420 of the CrPC as alleged.

7. This Court also relied on several Judgments of the Hon'ble Apex Court. Those are taken up herein below:

The Hon'ble Supreme Court in **The State of Kerala v. A. Pared Pillai and Anr.**⁹ has held as follows: -

"To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise."

Similarly, in the case in hand, there was nothing to show that the petitioners had dishonest or fraudulent intention at the time when agreement executed at the time of engagement. He worked for considerable period of time. It is not disputed by the complainant that he had not received any Salary and Performance Bonus from beginning. However, complainant raised question about the dues. Non-payment of Salary and Performance Bonus, by no stretch of imagination, can be called dishonest inducements. It was purely employer and employee dispute which definitely comes under civil dispute. Simply because of the amounts have not been paid or there are outstanding will not make it a case of wilful or dishonest inducement or deception or criminal breach of trust.

⁹ 1972 Cri.L.J.1243

Similarly, in **Haridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.**¹⁰, like in the present case, the Hon'ble Apex Court held that:-

“There was no allegation in the complaint indicating, expressly or impliedly, any intentional deception on the part of the appellants right from the beginning of the transaction. The Hon'ble Apex Court drew distinction between cheating from mere breach of contract. According to the Hon'ble Apex Court, definition of cheating contemplates two separate classes of acts namely deception by fraudulent or dishonest inducement and deception by intention. Deception by fraudulent or dishonest inducement must be shown to exist right from the beginning of the transaction”.

It is not the case of the opposite party no. 2, in the present case, that he was deceived by fraudulent or dishonest inducement from the beginning of his engagement rather admits he received Salary and Performance Bonus.

8. Upon perusal of the copy of complaint, it shows that there was no fraudulent or dishonest inducement or deception by intentional practice by the petitioners right from the beginning of his engagement or working as Chief Executive Officer even if subsequent

¹⁰ (2000) 4 Supreme Court Cases 168

payment has not been made, that will not tantamount to deception, fraudulent or dishonest inducement nor would it amount to deception by intentional means right from the beginning. Therefore, the case either under Section 420 or 406 of IPC, in the facts of this case, has not been made out. He entered into a contract. Non-payment of Salary or Performance Bonus cannot be called cheating in the facts of this case.

Similar view was also expressed in the case of **Govind Prasad Kejriwal vs State of Bihar and another**¹¹ as relied by the Petitioners. The Hon'ble Supreme Court has observed that the Magistrate is required to consider whether even a prima facie case is made out and the dispute is purely of a civil nature then proceedings against the accused even for offence under Section 323 shall be an abuse of process of the Court and the law. In those cases, order passed by the Magistrate taking cognizance and issuing the summons against the accused should be set aside.

9. In the case of **Paramjeet Batra v. State of Uttarakhand**¹², the Hon'ble Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure

¹¹ (2020) 16 Supreme Court Cases 714

¹² (2013) 11 SCC 673

should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

(emphasis supplied)

10. In the light of above observations together with averments contained in the Court complaint, this Court finds ingredient of the offences alleged by the opposite party no. 2 are missing. Merely because non-payment of Salary or Performance Bonus has not been made or accounts have not been settled, does not constitute offences punishable under Sections 406/420/34 of the Indian Penal Code,

1860. The allegation in Court complaint does not spell out any essential ingredient for commission of offence under Sections 406 and 420 of the Indian Penal Code, 1860. The disputes between the parties are purely civil in nature and criminal proceeding in such a civil nature case should not be allowed to be continued any further against the present petitioners.

11. So far as the question raised by the learned counsel appearing on behalf of the petitioners that no part of cause of action arose in Kolkata or within the territorial jurisdiction of the Learned Trial Court because it is the admitted fact that the company and place of work were at Gujarat. The alleged dues towards Salary and Performance Bonus and record of the same are also lying at Gujarat. Nothing happened in Kolkata or within the territorial jurisdiction of the Learned Trial Court. However, the complainant has deliberately filed a complaint only to harass the petitioners and without considering the territorial jurisdiction. The Learned Trial Court has taken cognizance upon the opposite party no. 2's complaint without looking into the territorial jurisdiction. The question of territorial jurisdiction in criminal cases revolves around (i) place of commission of the offence or (ii) place where the consequence of an act, both of which constitute an offence, ensues or (iii) place where the accused

was found or (iv) place where the victim was found or (v) place where the property in respect of which the offence was committed, was found or (vi) place where the property forming the subject matter of an offence was required to be returned or accounted for, etc., accordingly, as the case may be.

12. Chapter XIII of the Code of Criminal Procedure, 1973 contains provisions relating to jurisdiction of Criminal Courts in inquiries and trials. The Code maintains a distinction between (i) inquiry; (ii) investigation; and (iii) trial. The words “*inquiry*” and “*investigation*” are defined respectively in clauses (g) and (h) of Section 2 of the Code.

13. The principles laid down in Sections 177 to 184 of the Code (contained in Chapter XIII) regarding the jurisdiction of criminal Courts in inquiries and trials can be summarized in simple terms as follows:

(I) Every offence should ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. This rule is found in Section 177. The expression “*local jurisdiction*” found in Section 177 is defined in Section 2(j) “in relation to a Court or Magistrate, the local area within which the Court or Magistrate may exercise all or any of its or his powers under the Code.

(II) In case of uncertainty about the place in which, among the several local areas, an offence was committed, the Court having jurisdiction over any of such local areas may inquire into or try such an offence.

(III) Where an offence is committed partly in one area and partly in another, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

(IV) In the case of a continuing offence which is committed in more local areas than one, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

(V) Where an offence consists of several acts done in different local areas it may be inquired into or tried by a Court having jurisdiction over any of such local areas. *(Serial nos. II to V are mentioned in Section 178 of the CrPC).*

(VI) Where something is an offence by reason of the act done, as well as the consequence that ensued, then the offence may be inquired into or tried by a Court within whose local jurisdiction either the act was done or the consequence ensued. *(Mentioned in Section 179 of the CrPC).*

(VII) In cases where an act is an offence, by reason of its relation to any other act which is also an offence, then the first mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either of the acts was done. (*Mentioned Section 180 of the CrPC*)

(VIII) In certain cases, such as dacoity, dacoity with murder, escaping from custody etc., the offence may be inquired into and tried by a Court within whose local jurisdiction either the offence was committed or the accused person was found.

(IX) In the case of an offence of kidnapping or abduction, it may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or conveyed or concealed or detained.

(X) The offences of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction, the offence was committed or the stolen property was possessed, received or retained.

(XI) An offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property

was received or retained or was required to be returned or accounted for by the accused person.

(XII) An offence which includes the possession of stolen property, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person, having knowledge that it is stolen property. *(Serial Nos. VIII to XII are found in Section 181 of the CrPC)*

(XIII) An offence which includes cheating, if committed by means of letters or telecommunication messages, may be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or received.

(XIV) An offence of cheating and dishonestly inducing delivery of the property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(XV) Some offences relating to marriage such as Section 494, IPC (marrying again during the life time of husband or wife) and Section 495, IPC (committing the offence under Section 494 with

concealment of former marriage) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with the spouse by the first marriage.

(Serial Nos. XIII to XV are available in Section 182 of the CrPC)

(XVI) An offence committed in the course of a journey or voyage may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

(Serial no.XVI found in Section 183 of the CrPC).

(XVII) Cases falling under Section 219 (*three offences of the same kind committed within a space of twelve months whether in respect of the same person or not*), cases falling under Section 220 (commission of more offences than one, in one series of acts committed together as to form the same transaction) and cases falling under Section 221, (where it is doubtful what offences have been committed), may be inquired into or tried by any Court competent to inquire into or try any of the offences.

(Serial no. XVII found in Section 184 of the CrPC).

14. Apart from Sections 177 to 184, which lay down in elaborate details, the rules relating to jurisdiction, Chapter XIII of the Code also contains a few other sections.

Section 185 empowers the State Government to order any case or class of cases committed for trial in any district, to be tried in any Sessions division.

Section 186 empowers the High Court, in case where 2 or more courts have taken cognizance of the same offence and a question as to which of them should inquire into or try the offence has arisen, to decide the district where the inquiry or trial shall take place.

Section 187 speaks about the powers of the Magistrate, in case where a person within his local jurisdiction, has committed an offence outside his jurisdiction, but the same cannot be inquired into or tried within such jurisdiction.

Sections 188 and 189 deal with offences committed outside India.

15. After laying down in such great detail, the rules relating to territorial jurisdiction in Chapter XIII, the Code of Criminal Procedure, 1973 makes provisions in Chapter XXXV, as to the fate of

irregular proceedings. It is in that Chapter XXXV that one has to search for an answer to the question as to what happens when a court, which has no territorial jurisdiction, inquires or tries an offence.

16. Section 460 lists out 9 irregularities, which, if done in good faith by the Magistrate, may not vitiate his proceedings. Section 461 lists out 17 irregularities, which if done by the Magistrate, will make the whole proceedings void. Clause (l) of Section 461 is of significance and it reads as follows:

*“If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:
(l) tries an offender:
his proceedings shall be void”*

17. Then comes to Section 462, which saves the proceedings that had taken place in a wrong sessions division or district or local area. But, this is subject to the condition that no failure of justice has occasioned on account of the mistake. Section 462 reads as follows:

“462. Proceedings in wrong place. –
No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions

division, district, sub division or other local area, unless it appears that such error has in fact occasioned a failure of justice.”

18. A cursory reading of Section 461(l) and Section 462 gives an impression that there is some incongruity. Under Clause (l) of Section 461 if a ***Magistrate not being empowered by law to try an offender***, wrongly tries him, his proceedings shall be void. ***A proceeding which is void under Section 461 cannot be saved by Section 462.*** The focus of clause (l) of Section 461 is on the ***“offender”*** and not on the ***“offence”***. If clause (l) had used the words “tries an offence” rather than the words “tries an offender”, the consequence might have been different.

19. It is significant to note that Section 460, which lists out nine irregularities that would not vitiate the proceedings, uses the word “offence” in three places namely clauses (b), (d) and (e). Section 460 does not use the word “offender” even once.

20. On the contrary, Section 461 uses the word ‘offence’ only once, namely in clause (a), but uses the word “offender” twice namely in clauses (l) and (m). Therefore, it is clear that if an offender is tried by a Magistrate not empowered by law in that behalf, his proceedings

shall be void under Section 461. Section 462 does not make the principle contained therein to have force notwithstanding anything contained in Section 461.

21. The saving clause contained in Section 462 of the Code of Criminal Procedure, 1973 is in *pari materia* with Section 531 of the Code of 1898. In the light of Section 531 of the Code of 1898, a question arose before the Calcutta High Court in **Ramnath Sardar Vs. Rekharani Sardar**¹³, as to the stage at which an objection to the territorial jurisdiction of the court could be raised and considered. In that case, the objection to the territorial jurisdiction raised before a Magistrate in a petition for maintenance filed by the wife against the husband, was rejected by the Magistrate both on merits and on the basis of the saving clause in Section 531. But, the Hon'ble High Court held that Section 531 would apply only after the decision or finding or order is arrived at by any Magistrate or Court in a wrong jurisdiction and that if any objection to the territorial jurisdiction is taken in any proceeding, it would be the duty of the Magistrate to deal with the same.

¹³ (1975) Criminal Law Journal 1139

22. This Bench relied upon the decision in **Purushottam Das Dalmia Vs. State of West Bengal**¹⁴ to point out that there are two types of jurisdictional issues for a criminal Court, namely, (i) the jurisdiction with respect of the power of the Court to try particular kinds of offences and (ii) its territorial jurisdiction.

23. It was specifically held by the Hon'ble Supreme Court in **Raj Kumari Vijn vs. Dev Raj Vijn**¹⁵ that the question of jurisdiction with respect to the power of the Court to try particular kinds of offences goes to the root of the matter and that any transgression of the same would make the entire trial void. However, territorial jurisdiction, according to the Court :

“Territorial jurisdiction is a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused and the convenience of the witnesses who have to appear before the Court.”

24. After making such a distinction between two different types of jurisdictional issues, the Hon'ble Supreme Court concluded in that case, that where a Magistrate has the power to try a particular offence, but the controversy relates solely to his

¹⁴ AIR 1961 SC 1589

¹⁵ (1977) 2 SCC 190

territorial jurisdiction, the case would normally be covered by the Section 462 of the Code of 1973.

25. From the above discussion, it is possible to take a view that the words “tries an offence” are more appropriate than the words “tries an offender” in Section 461 (l). This is because, lack of jurisdiction to try an offence cannot be cured by Section 462 and hence Section 461, logically, could have included the **trial of an offence** by a Magistrate, not empowered by law to do so, as one of the several items which make the proceedings void. In contrast, the **trial of an offender** by a court which does not have territorial jurisdiction, can be saved because of Section 462, provided there is no other bar for the court to try the said offender (such as in Section 27). But, Section 461 (l) makes the proceedings of a Magistrate void, if he tried an offender, when not empowered by law to do.

26. Be that as it may, the upshot of the above discussion is (i) that the issue of jurisdiction of a court to try an “offence” or “offender” as well as the issue of territorial jurisdiction, depend upon facts established through evidence (ii) that if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in Sections 177

to 184 of the Code and (iii) that these questions may have to be raised before the court while trying the offence.

27. Having taken note of the legal position, let me now come back to the cases on hand. It raises about the territorial jurisdiction, at least as of now. The answer to this depends upon facts to be established by evidence. The facts to be established by evidence, may relate either to the place of commission of the offence or to other things dealt with by Sections 177 to 184 of the Code. In such circumstances, this Court cannot order about the lack of territorial jurisdiction before marshalling of evidence.

28. In the light of the above discussions, this Court finds this is not the stage to decide about the territorial jurisdiction.

29. With regard to non-compliance of mandatory provision as enumerated in Section 202 of the CrPC, it is admitted fact that the petitioners reside beyond the territorial jurisdiction of the Court concerned. There is no dispute with regard to the address of the accused persons. Accordingly, it would be necessary to assert whether the Learned Trial Magistrate should follow the provisions of sub-section (1) of Section 202 of the CrPC and for that this Court would like to considered the judgment referred by the Petitioners

passed in **S. S. Binu v. State of West Bengal and Another** where the Division Bench observed in paragraph nos. 61 to 68 as under: -

“61. The term "inquiry" is defined under Sub-Section (g) of Section 2 Cr.P.C which is quoted below: -

2.(g) "inquiry" means every inquiry other than trial, conducted under this court by a Magistrate or court."

62. The above provision purports that every inquiry other than a trial conducted by the Magistrate or court is an inquiry under Section 200, Cr.P.C. Examination of complaint only is necessary with the option of examining the witness present, if any, under the inquiry under Section 202, Cr.P.C., the witnesses are examined for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused.

63. In *Chandra Deo Singh Vs. P. C. Bose* reported in AIR 1963 SC 1430 a four Judges Bench of the Hon'ble Supreme Court considered Section 202 of the old Criminal Procedure and held as under: -

8. the object of the provisions of Section 202 (corresponding to present Section 202 of the Code), was to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath.

64. The Hon'ble Supreme Court while considering the objects underlined the provisions of Section 202 Cr.P.C. in **Manharibhai Muljibhai Kakadia & Anr. (2012 AIR SCW 5314, para 23) (supra)** and made the following observations: -

"20. Section 202 of the Code has twin objects; one, to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate himself may hold an inquiry under Section 202 of the Code or direct an investigation to be made by a police officer. The dismissal of the complaint under Section 203 is without doubt a pre-issuance of process stage. The Code does not permit an accused person to intervene in the course of inquiry by the Magistrate under Section 202. The legal position is no more *res integra* in this regard. More than five decades back, this Court in **Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker (AIR 1960 SC 1113)** with reference to Section 202 of the Criminal Procedure Code, 1898 (corresponding to Section 202 of the present Code) held that the inquiry under Section 202 was for the purpose of ascertaining the truth or falsehood of the complaint, i.e. for ascertaining whether there

was evidence in support of the complaint so as to justify the issuance of process and commencement of proceedings against the person concerned.

65. *The amended provision of sub-section (1) of Section 202 CrPC came up for consideration of the Hon'ble Supreme Court in the matter of **National Bank of Oman (supra)** and the following observation made in the above decision is hereunder: -*

9. The duty of a Magistrate receiving a complaint is set out in Section 202, Cr.PC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202, CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202, CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all

adverting to any defense that the accused may have.

66. In **Vijay Dhanuka (2014 AIR SCW 2095, paras 13 and 14) (supra)**, it has been held that under Section 200, Cr. P.C, examination of complainant only is necessary with the option of examining the witnesses present, if any, whereas in enquiry under Section 202 Cr. P.C., the witnesses are examined for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused. The relevant portion of the above decision is set out below:

17. 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 has 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. xxx xxx xxx (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court; xxx xxx xxx". It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or 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.

18. 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. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process. In view of what we have observed above, we do not find any error in the order impugned. In the result, we do not find any merit in the appeals and the same are dismissed accordingly.

67. In **Vijay Dhanuka (2014 AIR SCW 2095) (supra)** the aforesaid principle has been repeated and reiterated in the observation that under Section 200, Cr.P.C. the examining of complainant only is necessary with the option of examining the witnesses present, if any. Though no specific mode or manner of enquiry is provided under Section 202 Cr.P.C., in an enquiry under Section 202, Cr. P.C., the witnesses are examined for the purpose of deciding whether or not there is sufficient ground of proceeding against the accused. The relevant portion of the above decision is quoted below:

14. 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 has 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.

15. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process.

68. Therefore, keeping in mind the object sought to be achieved by way of amendment of sub-section (1) of Section 202, Cr.P.C., the nature of enquiry as indicated in Section 19 of the Criminal Procedure (Amendment) Act, 2005, the Magistrate concerned is to ward off false complaints against such persons who reside at far off places with a view to save them from unnecessary harassment and the Learned Magistrate concerned is under obligation to find out if there is any matter which calls for investigation by Criminal Court in the light of the settled principles of law holding an enquiry by way

of examining the witnesses produced by the complainant or direct an investigation made by a police officer as discussed hereinabove.”

The Hon’ble Division Bench of this Court finally came to conclusion and answered in following manner in Paragraph 100 of the aforesaid judgment as under:

I. *According to the settled principles of law, the amendment of subsection (1) of Section 202 Cr.P.C. by virtue of Section 19 of the Criminal Procedure (Amendment) Act, 2005, is aimed to prevent innocent persons, who are residing outside the territorial jurisdiction of the Learned Magistrate concerned, from harassment by unscrupulous persons from false complaints. The use of expression “shall”, looking to the intention of the legislature to the context, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate*

II.....

III. *When an order of issuing summon is issued by a learned Magistrate against an accused who is residing at a place beyond the area in which he exercises his jurisdiction without conducting an enquiry under Section 202 Cr.P.C. the matter is required to be remitted to the learned Magistrate concerned for passing fresh orders uninfluenced by the prima facie conclusion reached by the Appellate Court.*

IV.....

V.”

30. Issue raised by the petitioners is meticulously considered by the Hon’ble Supreme Court in the case of **Sunil Todi and Ors. Vs. State of Gujarat & Anr.**¹⁶, wherein the Hon’ble Supreme Court while deciding the Issue has held in paragraph 33 as under:

*“33. The provisions of Section 202 which mandate the Magistrate, in a case where the accused is residing at a place beyond the area of its jurisdiction, to postpone the issuance of process so as to enquire into the case himself or direct an investigation by police officer or by another person were introduced by Act 25 of 2005 with effect from 23 June 2006. The rationale for the amendment is based on the recognition by Parliament that false complaints are filed against persons residing at far off places as an instrument of harassment. In **Vijay Dhanuka v. Najima Mamtaj [(2014) 14 SCC 638: 2014 AIR SCW 2095]**, this Court dwelt on the purpose of the amendment to Section 202, observing:*

“11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process ‘in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction’ and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other

¹⁶ (2022) 16 SCC 762 : 2021 SCC OnLine SC 1174

person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

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" is 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 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.”

The judgment delivered in the cases of **S.S. Binu V. State of West Bengal and another** reported in **2018 CrI.L.J 3769** as well as **Sunil Todi and Ors. Vs. State of Gujarat & Anr.** reported in **(2022) 16 SCC 762 : 2021 SCC OnLine SC 1174** are squarely applicable in the present facts and circumstances of the instant case.

31. Furthermore, this Court finds there is no substance or ingredients to constitute offence punishable under Sections 420/406/34 of the Indian Penal Code, 1860. The Learned Trial Court issued process under Sections 406/34 of the Indian Penal Code, 1860 without considering the case of the complainant. He must have to prove at least prima facie case against the petitioners. A reading of

the complaint petition in question does not disclose any specific role or act or particulars of the Petitioners resulting in commission of the offences alleged. The learned counsel appearing on behalf of the petitioners rightly relied a judgment passed in a case ***Binod Kumar and others vs. State of Bihar and Another***¹⁷. In the said judgment, the Hon'ble Supreme Court held in paragraphs 16 to 18 as follows:

“16. Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, prosecution must prove:

(i) that the accused was entrusted with property or with dominion over it and

(ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it.

The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.

17. Section 420 IPC deals with cheating. Essential ingredients of Section 420 IPC are:-

¹⁷ **(2014) Supreme Court Cases 663**

(i) cheating;

(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

(iii) mens rea of the accused at the time of making the inducement.

18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.”

From the aforesaid observation of the Hon’ble Supreme Court, it is crystal clear that non-payment of outstanding dues towards

Outstanding Salary or Performance Bonus by the company does not amount to Criminal breach of trust.

32. Accordingly, **CRR No. 1395 of 2022** is **allowed**. Connected applications, if any, are also, thus, disposed of.

33. Consequently, the proceeding arising out of a Complaint Case No. 180 of 2020 filed under Sections 420/406/34 of the Indian Penal Code, 1860 by the complainant is hereby quashed insofar as the petitioners are concerned and issuance of summons thereof upon the petitioners are also, thus, set aside.

34. Let a copy of this Judgment be sent to the Learned Trial Court for information.

35. Case Diary, if any, is to be returned to the learned counsel for the State.

36. Interim order, if any, stands vacated.

37. All parties will act on the server copies of this Judgment uploaded from the official website of this Court.

38. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)