

S. No. 153

Supplementary

**HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

CRM (M) No. 450/2023

CrIM No. 1067/2023

Sajad Ahmad Mir

.....Petitioner(s)

Through: Mr. Shahbaz Sikander, Adv.

V/s

Mukhtair ul Qadir

..... Respondent(s)

Through: Mr. Zahid Hussain Dar, Adv.

CORAM:

Hon'ble Mr. Justice Rajnesh Oswal, Judge.

ORDER

04.09.2023

1. The petitioner has sought quashing of the complaint titled "Mukhtar ul Qadir Vs. Sajad Ahmad Mir" pending before the court of Chief Judicial Magistrate, Pulwama (hereinafter called as the 'trial court') and also the order dated 28.03.2023 by virtue of which the process has been issued against the petitioner for commission of offence under section 138 N.I.Act, on the ground that the complaint filed before the learned trial court was not signed either by respondent/complainant or his counsel and the affidavit in support of the impugned complaint was also not signed by the respondent/complainant. It is also urged that the order dated 28.03.2023 has been passed on the printed format by filing the blank spaces.

2. With the consent of the learned counsels for the parties, the petition has been considered finally. Learned counsel has reiterated the submissions made in the petition.
3. Per contra, learned counsel for the respondent submitted that the complaint cannot be quashed on the ground that the same has not been signed by the complainant. He fairly submitted that the affidavit has not been signed by the complainant/respondent but he urged that the defect in the affidavit will have no bearing on the merits of the claim of the respondent and it is merely an irregularity which can be corrected. He also submitted that the learned trial court had issued the process after recording the statements of complainant and one witness on oath.
4. Heard and perused the record.
5. This is an admitted fact that neither the complaint nor the affidavit in support of the complaint has been signed by the respondent/complainant. In *Indra Kumar Patodia and anr. Vs. Reliance Industries Limited and Others reported in (2012) 8 SCC 205*, the Hon'ble Supreme Court has held that the complaint under Section 138 of the Negotiable Instruments Act without signature is maintainable, when such complaint is verified by the complainant and process has been issued after due verification. In view of the above pronouncement, the complaint cannot be quashed for want of signature of the complainant and the complainant can pursue the

complaint. Equally true is that the affidavit in support of the complaint has not been signed by the respondent/complainant. It may amount to irregularity, which can be cured by permitting the complainant to file fresh affidavit in support of complaint

6. This Court however finds substance in the contention raised by the petitioner that the learned trial Magistrate has issued the process by filling the blanks of the printed proforma for issuing the process against petitioner.
7. In *Pepsi Foods Ltd. v. Special Judicial Magistrate* reported as (1998) 5 SCC 749, 760, it has been held as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

8. The issuance of process is a serious matter and it must reflect the application of mind on the part of the concerned Magistrate though it is not incumbent upon the Magistrate to explicitly state the reasons for issuance of process. The practice of issuance of process on printed

proforma by filling blank spaces by hand has been deprecated by the various High Courts. Taking cognizance and the issuance of process is a judicial act. It must reflect application of mind. The process should not be issued in a mechanical manner by simply filling the blank spaces in the printed proforma. Such practice provides an occasion to the accused to approach the higher courts complaining the non-application of mind by the Magistrate, thereby leading to an avoidable delay in the disposal of the complaint. On this ground only, this Court is of the view that the order of issuance of process dated 28.03.2023 is not sustainable in the eyes of law and the same is quashed.

9. Accordingly, the present petition is disposed of by permitting the respondent to file duly sworn fresh affidavit, before the learned trial court and the learned trial court after considering the statement of respondent/complainant and witness of the complainant, shall proceed in accordance with law by passing the fresh orders. Needless to say, that this Court has not made any observation on the merits of the claim of either of the parties.

10. Disposed of.

(Rajnish Oswal)
Judge

SRINAGAR

04.09.2023

“Aasif