

**Case :- APPLICATION U/S 482 No. - 37980 of 2019**

**Applicant :- Girjesh And 6 Ors**

**Opposite Party :- State of U.P. and Another**

**Counsel for Applicant :- Vipin Kumar Singh**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Rajeev Misra,J.**

Supplementary affidavit filed on behalf of the applicants in Court today, is taken on record.

Heard Mr. Vipin Kumar Singh along with Mr. Amit Saxena, learned counsel for applicants, and learned A.G.A. for State.

This application under Section 482 Cr.P.C. has been filed challenging the summoning order dated 27.06.2019 passed by Civil Judge (Junior Division)/ Judicial Magistrate, Sant Kabir Nagar, in Complaint Case No. 598 of 2018 (Pushpa Singh Vs. Girjesh Singh and others) under Sections 323, 352, 452, 504, 506 I.P.C., P.S. Mahuli, District-Sant Kabir Nagar as well as the entire proceedings of the above mentioned complaint case.

Learned counsel for applicants invited attention of the Court to summoning order dated 27.06.2019. He submits that the order impugned in the present application is wholly arbitrary and therefore liable to be set aside by this Court. Elaborating his submission, learned counsel for applicants submits that the Court below has simply recorded a conclusion that on the basis of the complaint, the statement of the complainant and his witnesses, prima facie, offence under Sections 323, 352, 452, 504, 506 I.P.C. appears to have been committed. The said conclusion recorded by the Court below is not preceded by a discussion of the allegations made in the complaint or the statement of the complainant and his witnesses as recorded under sections 200 and 202 Cr. P. C. He, therefore, submits that in absence of any finding recorded by the Court below, on the basis of the averments made in the complaint, the statement of the complainant and that of the witnesses, no prima facie satisfaction was recorded by the Court below for summoning the applicant under Sections 323, 352, 452, 504, 506 IPC. As such, no enquiry was conducted by the Magistrate before passing the impugned summoning order dated 27.06.2019.

In support of the aforesaid submission, reliance is placed upon the judgement of this Court in the case of ***Mahboob and others vs. State of U.P. and another***, reported in ***2017 (2) JIC, 320***,

**(All) (LB)**. Paragraph Nos. 10, 11 and 12 of the said judgement are relevant for the controversy in hand and are accordingly reproduced herein under:-

*"(10) Hon'ble Apex Court has further dealt with the nature of inquiry which is required to be conducted by the Magistrate and referring the case of Vijay Dhanuka (supra) it was held as under:*

*"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 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."*

*(11) In the present case, the learned Magistrate has not conducted any inquiry so as to satisfy himself that the allegations in the complaint constitute an offence and when considered alongwith the statements recorded and the result of such inquiry. There is ground for proceedings against the petitioners under Section 204 CrPC. There is nothing on record to show that the learned Magistrate has applied his mind to arrive at a prima facie conclusion. It must be recalled that summoning of accused to appear the criminal court is a serious matter affecting the dignity self-respect and image in the society. A process of criminal court cannot be made a weapon of harassment.*

*(12) Learned Magistrate has passed a very cryptic order simply by saying that the statement of complainant as well as witnesses recorded under Sections 200 and 202 CrPC are perused and accused are summoned such order per se itself illegal which could not stand the test of law."*

Reliance is also placed upon the judgement of this Court in the case of **Smt. Shiv Kumar and others vs. State of U.P. and another**, reported in **2017 (2) JIC, 589, (All) (LB)**. Paragraph No. 10 of the aforesaid judgement is relevant for the controversy in hand. The same is as under:-

*"Learned Magistrate was required to atleast mention in the order about the prima facie satisfaction for summoning the accused. The order must reflect that the learned Magistrate has exercised his jurisdiction in accordance with law after satisfying himself about the prima facie allegations made in the complaint. The accused cannot be summoned*

mechanically merely by writing that perused the statements under Sections 200 and 202 Cr. P. C."

Reference may also be made to the judgement of this Court in the case of **Hariram Verma and 4 Others Vs. State of U.P. and Another**, reported in **2017 (99) ALL CC 104**, wherein the following observations have been made in paragraphs 7 to 16:

"7. A perusal of this impugned summoning order indicates that learned Magistrate had noted in the impugned order the contents of complaint and evidences u/s 200 and 202 CrPC but had neither any discussion of evidence was made, nor was it considered as to what overt act had allegedly been committed by accused. This contention of learned counsel for the applicants cannot be ruled out that learned counsel have noted the contents of complaint and statements without considering its probability or prima facie case, and whether he had actually considered statements u/ss 200, 202 CrPC or the documents of the original. At stage of summoning, the Magistrate is not required to meticulously examine or evaluate the evidence. He is not required to record detailed reasons. A brief order which indicate the application of mind is all that is expected of him at the stage.

8. But in impugned order there is nothing which may indicate that learned Magistrate had even considered facts of the case in hand before passing the summoning order. Impugned order clearly lacks the reflection of application of judicial discretion or mind. Nothing is there which may show that learned Magistrate, before passing of the order under challenge had considered facts of the case and evidence or law. Therefore it appears that, in fact, no judicial mind was applied before the passing of impugned order of summoning. Such order cannot be accepted as a proper legal judicial order passed after following due procedure of law.

9. In ruling "M/s. Pepsi Food Ltd. & another vs. Special Judicial Magistrate & others, 1998 UPCrR 118" Hon'ble Supreme Court held :-

"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 the accused. Magistrate had to carefully scrutinize 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."

10. In "Paul George vs. State, 2002 Cri.L.J. 996" Hon'ble Supreme Court held :-

"We feel that whatever be the outcome of the pleas raised by the appellant on merit, the order disposing of the matter must indicate application of mind to the case and some reasons be assigned for negating or accepting

such pleas. - - - - It is true that it may depend upon the nature of the matter which is being dealt with by the Court and the nature of the jurisdiction being exercised as to in what manner the reasons may be recorded e.g. in an order of affirmance detailed reasons or discussion may not be necessary but some brief indication by the application of mind may be traceable to affirm an order would certainly be required. Mere ritual of repeating the words or language used in the provisions, saying that no illegality, impropriety or jurisdictional error is found in the judgment under challenge without even a whisper of the merits of the matter or nature of pleas raised does not meet the requirement of decision of a case judicially."

11. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 the Apex Court had held :

"Section 203 of the Code empowers a Magistrate to dismiss a complaint without even issuing a process. It uses the words "after considering" and "the Magistrate is of opinion that there is no sufficient ground for proceeding". These words suggest that the Magistrate has to apply his mind to a complaint at the initial stage itself and see whether a case is made out against the accused persons before issuing process to them on the basis of the complaint. For applying his mind and forming an opinion as to whether there is sufficient ground for proceeding, a complaint must make out a prima facie case to proceed. This, in other words, means that a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words "if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding". The words "sufficient ground for proceeding" again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."

12. It is settled principle that while summoning an accused, the court has to see prima facie evidence. The 'prima facie evidence' means the evidence sufficient for summoning the accused and not the evidence sufficient to warrant conviction. The enquiry u/s 202 CrPC is limited only to ascertain of truth or falsehood of allegations made in the complaint and whether on the material placed by the complainant a prima facie case was made out for summoning the accused or not.

13. As held by the Courts as above, the passing of order of summoning any person as accused is a very important matter, which initiates criminal proceeding against him. Such orders cannot be passed summarily or without applying judicial mind.

14. In light of this legal position I have gone through the impugned order. A perusal of this order indicates that neither any discussion of evidence was made by learned, nor was it considered as to which accused had allegedly committed what overt act. The five accused persons of complaint

were summoned for offences mentioned in it. Impugned order clearly lacks the reflection of application of judicial discretion or mind. Nothing is there which may show that learned Magistrate, before passing of the order under challenge had considered the facts and circumstances of the case and the evidence or the law. Therefore it appears that, in fact, no judicial mind was applied before the passing of impugned order of summoning. Such order cannot be accepted as a proper legal judicial order passed after following due procedure of law. Therefore it is liable to be quashed.

15. In *Anita Malhotra v. Apparel Export Promotion Council*, (2012) 1 SCC 520 the Apex Court had hld as under:

"20. As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction u/s 482 of the Code."

16. Considering the uncontroverted averment of present petition u/s 482 CrPC as well as affidavit supporting it, the incorrect and unbelievable complaint case, and false implication of five petitioners and the general allegations levelled by informant in her FIR without allegations of any specific act, the incorrectness of cause of action for the complaint and considering the vagueness of information mentioned in complaint, and in light of verdict mentioned in aforesaid rulings of Hon'ble Apex Court, this appears to be a case in which applicants should succeed and the impugned summoning order as well as the complaint case are liable to be quashed."

In the light of the judgements referred to above, it is explicitly clear that the impugned summoning order passed by Court below is cryptic and does not stand the test laid down by this Court.

Accordingly, the present criminal misc. application succeeds and is allowed. The impugned summoning order dated 27.06.2019 passed by Civil Judge (Junior Division)/Judicial Magistrate, Sant Kabir Nagar, in Complaint Case No. 598 of 2018 (Pushpa Singh Vs. Girjesh Singh and others) under Sections 323, 352, 452, 504, 506 I.P.C., P.S. Mahuli, District-Sant Kabir Nagar, is set aside. The Court below shall pass a fresh order in the light of the observations made herein above.

**Order Date :- 1.11.2019**

HSM