

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 186/2025

SUDHIR CHADHA AND ANR.

...Appellant(s)/Petitioner(s)

Through: Ms. Humairah Sajad, Advocate vice
Mr. R. A. Jan, Sr. Advocate

Vs.

MANZOOR AHMAD WANI AND ORS.

...Respondent(s)

Through: Mr. Aftab Ahmad, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER

30.05.2025

1. Mr. Aftab Ahmad, Advocate has filed his Power of Attorney on behalf of the respondent no.1 in the open Court, which is taken on record.
2. Petitioners are aggrieved of an order dated 05.12.2023, passed by the court of Chief Judicial Magistrate, Pulwama (Trial court) on a complaint filed by respondent herein titled as Manzoor Ahmad Wani v. Sudhir Chadhe and others. They are also aggrieved of the said complaint and seek quashing of both.
3. I have heard counsel for parties and considered the matter.
4. A complaint has been filed by one Manzoor Ahmad Wani S/o Ghulam Hassan Wani R/o Tiken Batapora Tehsil Pulwama District Pulwama (respondent herein) against (1) Sudhir Chadha Director Info and Dutch Horticulture Private Company Partner of Fruit 4 you company R/o Nanital Uthrakhand (2) Karnal Nath, Managing Director Info Dutch Horticulture Private Company Partner of Fruit 4 you (petitioners herein) and (3)

Mushtaq Ahmad Sheikh s/o Mohd Abdullah Sheikh R/o Sontabugh
Pulwama (4) Fayaz Ah. Mir S/o Ghulam Mohd Mir R/o Putregam Rajpora
Pulwama (5) Shakeel Ah Dar S/o Abdul Salam Dar R/o Bellow Dergund
Tehsil Rajpora District Pulwama (proforma respondents herein).

5. The aforesaid complaint has been filed under Section 420, 506 IPC. The said complaint was presented before the Trial court, who after recording the statement, has issued process against the accused by virtue of order impugned.
6. The contention of petitioners is that impugned order has been issued in utter disregard to the provisions of Section 202 of the Code of Criminal Procedure, which is *pari materia* to Section 225 of Bharatiya Nagarik Suraksha Sanhita, 2023, and mandates postponing of issuance of process against the accused persons if the complaint discloses that accused person(s) reside(s) beyond the territorial jurisdiction of the Magistrate before whom the complaint is presented. Reference in this regard has been made to ***Vijay Dhanuka vs. Najima Mamtaj (2014) 14 SCC 638; Uday Shankar Awasthi vs. State of UP (2013) 2 SCC 435***. Another contention of petitioners is that civil dispute has been given the colour of criminal dispute by respondent inasmuch as mere breach of contract as alleged in the complaint cannot give rise to criminal prosecution for cheating unless fraudulent dishonest intention is shown at the beginning of the transaction and the substance of complaint is to be seen. Reference has also been made to judgement dated 18.07.2022, passed in CRMC no.107 of 2017 titled as ***Ghulam Mohammad Naikoo vs. Abdul Qayoom Wani***.
7. Perusal of order reveals that the Court of City Munsiff without dealing with the conditions requiring initiation of proceedings. It outlines the

circumstances whereunder a Magistrate can take cognizance of an offence. Essentially it defines the process whereby a case is formally brought before a court. The conditions outlined in various Sections of the Code of Criminal Procedure, specifying prerequisites such as obtaining prior consent, filing written complaints by concerned authorities and enduring compliance with procedural protocols. The initiation of criminal proceedings is contingent upon satisfying the conditions ensuring a lawful and justified basis for legal actions. The conditions under the Chapter serve to protect individuals from unwarranted or malicious prosecution, maintaining the integrity of legal processes and upholding the principles of justice and fairness in the adjudication of offences.

8. Section 190 Cr.P.C. provides that Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitute such offence and such cognizance is taken when Magistrate applies his mind or takes judicial notice of offence with a view to initiate criminal proceedings in respect of offence which is said to have been committed. Such cognizance is taken when Magistrate takes judicial notice of an offence after application of mind. Cognizance takes place at a point when a Magistrate first takes judicial notice of offence. Taking of cognizance means cognizance of the offence not of the offender and once cognizance of offence is taken, it is the duty of the court to find out who is the real offender and once the court comes to the conclusion, it would issue process against such person. So, the requirement when the complaint is presented before the Magistrate to take cognizance of the offence after finding commission of the same from the facts of the case and after finding the commission of any such offence, he has to find out a person against whom

such offence is shown to have been committed and after being satisfied would proceed and issue process against him. Now one more requirement which is to be followed by the Magistrate in a case where the accused who are alleged to have committed the offence are residing beyond its jurisdiction. It has to take recourse to section 202 of the Cr.P.C.

9. Chapter XV of the Code of Civil Procedure provides for the procedure to be followed in case of complaints made to Magistrates and how the Magistrate has to proceed once the complaint is filed before it. Section 200 provides that once a complaint is made to Magistrate and a Magistrate taking cognizance of an offence on a complaint has to examine the complainant and the witnesses present, if any, on oath, and the substance of such examination is to be reduced in writing and is to be signed by both the complainant and the witnesses, and also by the Magistrate. However, such requirement is not required to be followed, if a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 and in case the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

10. Section 202 Cr.P.C. deals with postponement of issue of process (summons or warrants) against accused person. It empowers a Magistrate upon receiving a complaint to either inquire into the case himself or direct an investigation by a police officer or other authorized person to determine if there is sufficient ground to proceed with the complaint. The primary objective is to ensure that the allegations are properly scrutinized before

any process is issued against the accused so as to safeguard accused against frivolous or malicious complaints and to protect his rights. Section 202 in clear cut terms provides that any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding.

11. Section 203 provides that if upon consideration of statement of complainant, statement of any of his witnesses and the results of any investigation or inquiry under Section 202 Cr.P.C. the Magistrate is of the opinion that there is no sufficient ground to proceed, the complaint can be dismissed by briefly recording the reasons. Section 203, thus, acts as a filter mechanism in the criminal justice system to allow the Magistrate to weed out baseless or frivolous complaints at an early stage. Sufficient ground as is mentioned in Section 203 means that Magistrate must be satisfied that a prima facie case is made out against the accused, based on the evidence of witnesses entitled to a reasonable degree of credit and it does not require that there is enough ground for conviction; only that the case is not groundless. Section 204 deals with the formal initiation of criminal proceedings by a Magistrate after taking cognizance of an offence. It is a crucial procedural step that ensures that the accused is called before the court to answer the charges. Chapter XVI deals with commencement of proceedings before Magistrate.

12.Perusal of order impugned would show that the Trial court had failed to observe and comply with the provisions of the law as contained in Chapter XIV and/or XV of the Code of Criminal Procedure. Order impugned would show that without taking cognizance of the offence, process has been issued by the Magistrate against the petitioners and it has also failed to comply with the requirements of taking recourse to the provisions as contained in Section 202 Cr.P.C, which procedure was mandatorily to be adopted by the Magistrate, because the petitioners are from a place beyond the jurisdiction of the Magistrate. The Magistrate as is clear from the above said facts and circumstances fail to proceed in this matter in accordance with law and without taking cognizance of the offence and without taking recourse of Section 202 Cr.P.C., issued the process which is not only bad but illegal.

13.Thus, order impugned is required to be set aside, *for*, the way the Trial court has proceeded in this matter has caused failure of justice, which is accordingly, **set aside**. To this extent only petition is allowed.

14.The Trial Court shall consider the compliant afresh and before proceeding must go through the provisions of the Chapter XIV and XV of the Code of Criminal Procedure and thereafter, proceed in the matter strictly in accordance with law.

15.The complainant to cause his appearance before the Trial Court on 30.06.2025.

16.Registry to communicate this order to the Trial court.

17.**Disposed of.**

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
30.05.2025
"Imtiyaz"