

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

CRM(M) 269/2024

MOHAMMAD SHAFI SHEIKH

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

Through: Mr. Faisal Javaid, Advocate

Vs.

IHSTIYAQ AHMAD SHAH

...Respondent(s)

Through: Mr. Pervaiz Ahmad Wani, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
03.11.2025

Trial court (Judicial Magistrate First Class, Kangan), order dated 19.03.2024, whereby cognizance has been taken on a complaint filed by the respondent under Section 138 Negotiable Instrument Act and process has been issued is being challenged inter alia on the ground that cognizance has been taken and process issued without recording the statement of the complainant and witnesses as required under the provisions of the Code of Criminal Procedure.

As is evident from the record of the file and order impugned that the Trial court while taking cognizance and issuing process has not complied with the provisions as contained under Chapter XV of the Code. Section 200 provides as under:

- “200. Examination of Complainant: - A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate;
- Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-
- (a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or
- (b) If the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192;

Provided further that if 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.”

It is clear from the provisions as contained in Section 200, that the Magistrate, while taking cognizance of an offence in a complaint, has to examine upon oath the complainant and the witnesses present, if any, and the substance of such examination is to be reduced into writing which shall be signed by the complainant and the witnesses, and also by the Magistrate. This procedure is applicable to all the complaints except where a complaint is made by the public servant.

It is clear from the perusal of the impugned order that the Magistrate, before taking cognizance and issuing process, has not complied with the provisions as contained in Section 200, as it has not recorded the statement of the complainant and the witnesses. Therefore, order of taking cognizance and issuing process is bad and not in consonance with the provisions of Chapter XV and Section 200 CrP.C, is accordingly, set aside.

Matter is remanded back to Trial court which shall proceed in the matter after strictly complying with the provisions as contained in Chapter XV and Section 200 of Cr.P.C.

Complainant to appear before the Trial Magistrate on 25.11.2025.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
03.11.2025
“Imtiyaz”