



2026:AHC:83717

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 27722 of 2017

Chhote Lal And 10 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Sunil Kumar Singh
Counsel for Opposite Party(s)	:	Ashutosh Upadhyay, G.A.

Court No. - 84

AFR

HON'BLE JAI PRAKASH TIWARI, J.

1. Heard Mr. Sanjay Misra, learned counsel for applicants and learned A.G.A. for State.
2. This application under Section 482 Cr.P.C. has been filed challenging summoning order dated 12.07.2017 as well as Complaint Case No.1314 of 2016 (Ram Kishore Vs. Rakesh and others) under Sections- 323, 506 IPC Police Station- Kudh Fatehgarh, and District- Moradabad pending before learned Judicial Magistrate, Chandausi, District Moradabad.
3. Learned counsel for the applicants invited the attention of the Court to the summoning order dated 12.07.2017. He submits that the order impugned in present application is wholly arbitrary and therefore, liable to be set aside by this Court. Elaborating his submission, learned counsel for the applicant 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* an offence under sections 323, 506 IPC appears to have been committed. The said conclusion recorded by the court concerned 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. It is further submitted that in absence of any finding recorded by the court concerned, 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 concerned for summoning the applicants under sections 323, 506 IPC.
4. Learned AGA appearing on behalf of the State submits that there is no illegality and perversity in the impugned order and no interference is called for.

5. I have heard learned counsel for the parties and perused the record.

6. Considering the facts of the present case, it transpires that in the impugned order, there is nothing which may indicate that learned Magistrate had considered the facts of the case before passing the summoning order.

7. In the judgment passed by this Court in case of **Hariram Verma and 4 Others Vs. State of U.P. and Another, reported in 2017 (99) ALL CC 104**, it is held that in the impugned order the contents of complaint and evidences u/s 200 and 202 Cr.P.C., but had neither any discussion of evidence was made, nor was it considered as to what overt act had allegedly been committed by accused. The said observations have been made in paragraph no.7:-

"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 leaned 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. The view taken by the Hon'ble Supreme Court in case of **"M/s. Pepsi Food Ltd. & another vs. Special Judicial Magistrate & others, 1998 UPCR 118"** regarding summoning of an accused in criminal case, is quoted as under :-

"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."

9. It is also necessary to discuss Sections 203 & 204 of Cr.P.C.:-

"203. Dismissal of complaint.

- If, after considering the statement on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

10. 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 was 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 a well 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.

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 applicants under Section 204 Cr.P.C. 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 Cr.P.C. are perused and accused are summoned such order per se itself illegal which could not stand the test of law.

13. Considering the uncontroverted averment of present petition u/s 482 Cr.P.C. 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 his complaint 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.

14. 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 in the eyes of law.

15. Accordingly, the present criminal misc. application succeeds and is **allowed**. The impugned summoning order dated 12.07.2017 as well as Complaint Case No.1314 of 2016 (Ram Kishore Vs. Rakesh and others) under Sections- 323, 506 IPC Police Station- Kudh Fatehgarh, and District- Moradabad pending before learned Judicial Magistrate, Chandausi, District Moradabad, is set aside.

16. The direction is issued to the learned Magistrate, concerned to pass afresh order in the light of the observations made herein above.

(Jai Prakash Tiwari,J.)

April 16, 2026
S.K.