

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41316 of 2015

Arising Out of PS.Case No. -2025 Year- 2015 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Padam Chand Garg @ Padam Chand Gupta son of Late Bal Kishan Das, resident of 1C, Court Road, Civil Lines, Delhi- 110054.
 2. Balram Garg son of Late Bal Kishan Das, resident of 1C, Court Road, Civil Lines, Delhi- 110054.

.... Petitioners

Versus

1. The State of Bihar.
2. Sanjay Kumar @ Sanjay Kumar Singh, S/o Late Rana Raghunandan Singh, resident of Mohalla East Boring Canal Road, Police Station Budha Colony, Patna- 800001.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Chittaranjan Sinha, Sr. Advocate
For the State : Mr. Murlidhar, APP
For the O P. No. 2 : Mr. Yogesh Chandra Verma, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-04-2016

Heard Mr. Chittaranjan Sinha, learned Senior Counsel for the petitioners and Mr. Yogesh Chandra Verma, learned Senior Counsel for the Opposite Party No.2 (hereinafter referred to “the Complainant”) and Mr. Murlidhar, learned Additional Public Prosecutor for the State.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short



‘CrPC’), the petitioners have sought for quashing of the order dated 16th July, 2015 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 2025(C) of 2015, whereby the learned Magistrate has summoned the petitioners for attendance for exercise of powers conferred under Section 204 of the CrPC for facing trial under Sections 468, 471 and 120-B of the Indian Penal Code (for short ‘IPC’).

3. The case of the Complainant as stated in the complaint is that the petitioners are respectively the Chairman and Managing Director of P.C. Jewellers Limited (for short ‘the Company’). On 27th July, 2014, the Company opened a new showroom in Patna and on 29th July, 2014, the Complainant ordered for a gold chain valuing Rs.74,999/- to the Company showroom. In order to make payment, the Complainant sold his old ornaments valuing Rs.45,789/-, which was adjusted by the Company against payment of the new gold chain. The remaining amount of Rs.29,210/- was paid by the Complainant to the staffs of the Company in cash. It has further been stated that the due date fixed for delivery of chain was 22nd August, 2014, but on 22nd August, 2014, when the Complainant visited the Company showroom for delivery of the ordered chain one Ravi De. Radia and one Samar Chand Goswami, both staffs of the Company showroom refused to

deliver the gold chain. When the Complainant requested them for the delivery, they said that the petitioners had directed them to deliver the chain after two months in view of the fact that several orders were placed before the Company and the Company was unable to deliver the orders within the stipulated period.

4. It has further been alleged that the aforesaid two staffs of the Company showroom further said that if he wants delivery of his chain immediately, he will have to pay an extra amount of Rs.20,000/- as directed by the petitioners. When the Complainant expressed his inability to pay the extra amount, both of them assaulted and threatened him with dire consequences.

5. It has been further stated that the Complainant went to Shrikrishnapuri Police Station to lodge an FIR in this regard, but the police did not register the FIR and, thereafter, Complaint Case No. 28676(C) of 2014 was filed in the court of Chief Judicial Magistrate, Patna on 23rd August, 2014. In the said complaint, the Complainant was examined on oath and the learned Judicial Magistrate 1st Class, Patna took cognizance of the offences under Sections 417 and 406 of the IPC against the aforesaid two staffs of the Company showroom, namely, Ravi De. Radia and Samar Chand Goswami only, vide order dated 10th November, 2014 and no *pima facie* case was found to be made as against the

petitioners.

6. The Complainant has further averred that being aggrieved and dissatisfied with the aforesaid order dated 10th November, 2014, whereby cognizance was not taken against the petitioners, the Complainant filed Cr. Revision No. 7758 of 2014 in the court of Sessions Judge, Patna on 2nd December, 2014. In the said Criminal Revision the learned Sessions Judge, Patna issued notice to the petitioners.

7. On receipt of notice, *vakalatnama* was filed on behalf of the petitioners in the court of Sessions Judge, Patna on 17th April, 2015. It has been stated that on seeing the said *vakalatnama*, the Complainant found that signatures put on the *vakalatnama* of both the petitioners are doubtful and incomplete. For his satisfaction and to remove his doubt, the Complainant applied for an information under the Right to Information Act (for short "RTI") before the Commercial Taxes Officer, Patna on 21st May, 2015 demanding a copy of signature of both the petitioners. Thereafter, the Complainant was supplied copy of signature of both the petitioners through post on 29th May, 2015 under the RTI. After obtaining the signatures of the petitioners under the RTI and after comparison the Complainant found that both of the signatures are different and not matching from the previous signatures put by



them on the *vakalatnama*, which had been filed in the court of Sessions Judge, Patna on 17th April 2015 in Cr. Revision No. 7758 of 2014. As such, it has been alleged by the Complainant that the accused petitioners have deliberately and willfully put their signatures on the aforesaid *vakalatnama* in collusion with each other like irresponsible persons in order to gain wrongfully and with a view to cheat and mislead the Complainant.

8. On the basis of the aforesaid allegations made in the complaint, the learned Magistrate examined the Complainant on oath under Section 200 of the CrPC and statement of the Complainant was reduced into writing.

9. Thereafter, the learned Magistrate finding a *prima facie* case to be made out against the petitioners for the offences punishable under Sections 468, 471 and 120-B of the IPC summoned them to face trial in exercise of power conferred under Section 204 of the CrPC vide order dated 16th July, 2015.

10. The aforesaid summoning order dated 16th July 2015 is under challenge in the present application.

11. It has been contended by Mr. Chittaranjan Sinha, learned Senior Counsel appearing for the petitioners that in respect of purchase of gold chain by the Complainant, a purchase order was issued to the Complainant showing a tentative date of

delivery as 22.08.2014. He has referred to Clause-4 of the relevant terms and conditions on the purchase order as contained in Annexure-2 to the present application, which is as under :-

“Clause- 4. Though, we will make all efforts to deliver the order on the scheduled date, sometimes the delivery of order may get delayed due to circumstances beyond our control.”

12. Referring to the aforesaid terms and conditions of the purchase order, he has submitted that in case there was any delay in delivery of the chain to the Complainant, the same would have constituted no offence. He has further submitted that when the court of Magistrate refused to summon the petitioners in the first complaint that is Complaint Case No. 28676 (C) of 2014, the Complainant has filed the present complaint in order to blackmail and harass the petitioners. He has submitted that being aggrieved by the order dated 10.11.2014 passed by the learned Magistrate, whereby he had declined to summon the petitioners in Complaint Case No. 28676 (C) of 2014, the Complainant has filed Cr. Revision No. 7758 of 2014 and, on notice, the petitioners have entered into appearance through their counsel. The *vakalatnama* executed in favor of the counsel has duly been executed by the petitioners. However, the Complainant maliciously started threatening and demanding huge amount from the petitioners for



settlement of the case and on finding that the Company is not succumbing to his illegal demands, he devised a fresh stratagem to pressurize and harass the Company and its Chairman and Managing Director so as to extract money from them. In order to perpetuate his evil design, the Complainant filed the present complaint, vide Complaint Case No. 2025 (C) of 2015 against the petitioners for the offences punishable under Sections 468, 471 and 120-B of the IPC alleging therein that signatures of the petitioners on the *vakalatnama* filed in Cr. Revision No. 7758 of 2014 are different from their signatures available on the record of Commercial Tax Office, Patna.

13. Mr. Chittaranjan Sinha, learned Senior Counsel, has further submitted that the impugned order dated 16th July, 2015 is illegal, improper and bereft of any application of judicial mind and passed without appreciating the facts of the case and without following provisions of law. He has submitted that the learned Magistrate has issued summons without considering the fact that the petitioners sign numerous documents every day and minor variance in signatures are bound to occur. As long as the petitioners are owning up their signatures and not disputing the same, no offence can be made out against them, much less offences under Sections 468, 471 and 120-B of the IPC. He has submitted that the

allegations made by the complainant even if believed to be true and correct, did not constitute any offence as no ingredients of Section 468, 471 and 120-B of the IPC is made out. He has also submitted that the learned Magistrate has issued summons without meeting the mandatory requirements of Section 202(1) of the CrPC.

14. *Per contra*, Mr. Yogesh Chandra Verma, learned Senior Counsel appearing for the Opposite Party No. 2, has contended that in view of the allegations made in the complaint which has been supported by the Complainant in his examination on oath, offences punishable under Sections 468, 471 and 120-B of the IPC are clearly made out. He has further submitted that the signing on the *vakalatnama* by the petitioners in a different manner than their normal signature would make it evident that the intention of the petitioners was to mislead the court and cheat the Complainant. He submits that the said act of the petitioners would certainly attract the ingredients of the offences punishable under Sections 468 and 471 of the IPC. He has further submitted that since the petitioners conspired together in order to cheat the Complainant, the ingredients of the offence punishable under Section 120-B of the IPC are also attracted against them. According to him, the present application preferred under Section 482 of the CrPC is premature and the minutest detail of the ingredients of the

offences can be considered by the court of Magistrate only at the stage of framing of charges and not at the stage of issuance of process.

15. Mr. Murlidhar, learned Additional Public Prosecutor for the State, has adopted the submissions made by the learned Senior Counsel appearing for Opposite Party No. 2.

16. I have heard learned counsel for the parties and perused the materials on record.

17. This Court would firstly like to consider whether the averments made in the complaint even assuming to be true in their entirety do attract the ingredients of the offences punishable under Sections 468, 471 and 120-B of the IPC.

18. Section 468 of the IPC provides that whoever commits 'forgery', intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description a term which may extend to seven years, and shall also be liable to fine.

19. Section 470 of the IPC defines that a false document or electronic record made wholly or in part by 'forgery' is designated a forged document or electronic record.

20. Section 471 of the IPC provides that whoever fraudulently or dishonestly uses as genuine any document or

electronic record which he knows or has reason to believe to be a 'forged' document or electronic record, shall be punished in the same manner as if he had 'forged' such document or electronic record.

21. The term 'forgery' used in the aforesaid Sections 468 and 471 of the IPC is defined in Section 463 of the IPC, which reads as under:

"463. Forgery.- Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

22. Section 464 of the IPC defines 'making a false document', which reads as under:-

"464. Making a false document — A person is said to make a false document or false electronic record—

First. — Who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature,

with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or affixed; or

Secondly.— *Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*

Thirdly.— *Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.*



23. Thus, it would be evident that the condition precedent for 'forgery' is 'making a false document or false electronic records'. The allegation made in the present case that the signatures of the petitioners on the *vakalatnama* filed in the Revision Petition No. 7758 of 2014 are different from their signatures available on the record of Commercial Tax Officer, Patna would not cover the prerequisites for constituting an offence of 'forgery'.

24. An analysis of Section 464 of the IPC would make it evident that it divides false documents into three categories;

- (i) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed;
- (ii) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person ; and,
- (iii) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind: or (b)

intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration.

25. A person may be guilty of 'forgery' in fraudulently signing his or her name when it is identical to the name of the person who should have signed, provided that the intent is to have the instrument received as that of the other person and the instrument is of legal efficacy. However, if no attempt is made to impersonate the other person or to deceive others into believing that the signer is that person, there is no 'forgery'.

26. Further, a person cannot commit 'forgery' by signing his or her name to an instrument, since the signer is both the actual and ostensible maker of that instrument. Moreover, where one makes his signature in good faith, there can be no 'forgery'.

27. Moreover, neither the Complainant has alleged any 'forgery' by the petitioners causing any damage, or injury to the public or to any person, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud to any person or the Complainant in particular. Consequently, no cognizance would have been taken under Section 468 of the IPC.

28. Furthermore, in order to constitute an offence



under Section 468 of the IPC, the accused is required to commit 'forgery', intending that the document or electronic record forged shall be used for the purpose of cheating. But in the instant case, from a bare perusal of the complaint, it is improbable to point out; how the petitioners have forged any document or electronic record for the purpose of cheating the complainant.

29. The complaint does not disclose as to how the accused persons have used as genuine a forged document or electronic record. Consequently, no cognizance could have been taken for offence under Section 471 of the IPC even if the complaint is believed in its entirety.

30. Mr. Chittaranjan Sinha, learned Senior Counsel for the petitioners has rightly submitted that even if the signatures on the *vakalatnama* filed in Revision Petition No. 7758 of 2014 appears to be different than the signatures of the petitioners available on the record of Commercial Tax Officer, the Complainant cannot make any grievance regarding them as long as the petitioners are owning up their signatures and not disputing the same. The Complainant has got no *locus standi* to challenge the authenticity of the signatures of the petitioners so long as the petitioners confirm the signatures on the *vakalatnama* are theirs.

31. The only other offence of which cognizance has

been taken in the present case is 120-B, which deals with the punishment of ‘criminal conspiracy’. Section 120-A in Chapter V-A of the IPC defines ‘criminal conspiracy’. It reads as under:-

“120-A. Definition of criminal conspiracy —

When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.”

32. The punishment of criminal conspiracy as prescribed under Section 120-B reads as under :-

“120-B. Punishment of criminal conspiracy —

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy

other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

33. From a bare perusal of the definition of ‘criminal conspiracy’ as given under Section 120-A of the IPC, it would be evident that the essential ingredients of offence of ‘criminal conspiracy’ is that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means such an agreement is designated as ‘criminal conspiracy’. No agreement except an agreement to commit an offence shall amount to a ‘criminal conspiracy’, unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof. In the present case, no inference can be drawn against the petitioners that they conspired to do any illegal act.

34. Thus, it would be evident from reading of Section 120-A and 120-B of the IPC that the essence of the agreement to break the law is the agreement to do an illegal act. By virtue of Section 43 of the IPC, the word ‘illegal’ includes everything which is an offence, secondly, everything which is prohibited by law and, thirdly, everything that furnishes ground for

civil action.

35. The alleged action of the petitioners in signing their own name on the *vakalatnama* and filing the same in the court through their counsel is neither an offence nor is prohibited by law. When the alleged act itself was not illegal, it cannot be said that there was any 'criminal conspiracy' and in absence of the essence of criminal conspiracy, the petitioners cannot be prosecuted or punished for the offence under Section 120-B of the IPC.

36. Such being the legal position, this Court, therefore, is of the view that none of the ingredients of any of the offences under which cognizance has been taken, are attracted in the present case. The allegations are patently absurd and inherently improbable. The discretion exercised by the learned Magistrate while passing the impugned order summoning the petitioners is wholly capricious and arbitrary. The learned Magistrate has totally failed to apply her judicial mind to the facts of the case and mechanically passed the order in a routine manner.

37. This takes me to the next question which merits consideration, namely, whether or not the learned Magistrate was right in dispensing with the inquiry as prescribed under Section 202(1) of the CrPC before issuing process against the petitioners.

38. In this regard, before proceeding further, it

would be pertinent to reproduce Sections 202-204 of the CrPC as under:-

“202. Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and 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 :

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath :

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by

the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant

203. Dismissal of complaint -

If, after considering the statements 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."

39. As would be evident from the above provisions, a private complaint is filed under Section 200 of the CrPC. It proceeds further when the Magistrate taking cognizance of an offence examines the Complainant and the witnesses present, if any, on oath, and if, on such material, the Magistrate comes to a conclusion that sufficient case has been made out for summoning the accused, the Magistrate may proceed to issue process under Section 204 of the CrPC. However, if the Magistrate at that stage finds that no prima facie case is made out and there is no sufficient ground for proceeding against the accused, then the Magistrate may straightway dismiss the complaint under Section 203 of the CrPC. The Magistrate may, in a given case, if he thinks fit and shall, in a



case, where the accused residing at a place beyond the area in which he exercises jurisdiction after examining the complainant and the witnesses proceed under Section 202 of the CrPC to further inquire into the case himself or direct an investigation to be conducted by a police officer or by such other persons, as he thinks fit, for the purpose of deciding whether or not there is sufficient ground to proceed in the matter. In an inquiry under sub-section (1) of Section 202 of the CrPC, the Magistrate may, if he thinks fit, may take evidence of the witness on oath. If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by CrPC on an Officer-in-charge of a police station except the power to arrest without warrant.

40. In the opinion of this Court, the words ‘and 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’ used in Section 202(1) of the CrPC make it clear that when the accused resides beyond the territorial Jurisdiction of the Court, it is mandatory for the Court to postpone the issuance of process and conduct an inquiry as envisaged under the said provision.

41. Even After holding an inquiry and meeting the



mandatory requirement of Section 202(1) of the CrPC, the option before the Magistrate would again be either to dismiss the complaint under Section 203 of the CrPC or to proceed under Section 204 of the CrPC and summon the accused. Thus, in my view, the learned Magistrate acted against the mandate of law in dispensing with the inquiry as envisaged under Section 202(1) of the CrPC in view of the fact that both the petitioners reside outside her territorial Jurisdiction.

42. At this stage, this Court would like to take judicial notice of the fact that the courts in the State are flooded with frivolous complaints. The tendency on the part of mischievous litigants to file vexatious and frivolous complaints is on rise. Most of the vexatious and frivolous complaints are filed either for settling scores or for causing harassment or blackmailing innocent persons. The purpose of a mischievous complainant is achieved when the innocent accused are summoned. It is high time to sound a note of caution to the Magistrates not to act mechanically. I remind them of their responsibility under the law. It is their bounden duty to scrutinize the allegations made in the complaint carefully with a view to protect the interest of an absent accused as also with a view to bring to book a person against whom materials are on record.



43. Be it noted that the CrPC deals with powers and functions of Judicial Magistrate at every stage both pre-trial and post-trial. These powers and functions upon the Magistrate are to be exercised in public trust for both the accused and the complainant otherwise the public faith in rule of law would be broken.

44. Apart from the powers conferred under the CrPC, Section 165 of the Indian Evidence Act grants sweeping powers to the judge, who may, in order to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and neither parties nor their agents can make any objection to any such question or order.

45. In view of growing tendency to file false complaints in the court as also to come out with inflated and exaggerated allegations, the Presiding Officers must cease to be a silent spectator and mere a recording machine. The Magistrates dealing with complaint cases filed under Section 200 of the CrPC and inquiring them under Section 202 of the CrPC must become an active participant in inquiry evincing intelligence and active interest by putting questions to witness in order to arrive at a rightful conclusion.



46. In **Chandra Deo Singh vs. Prokash Chandra Bose @ Chabi Bose and another**, reported in **AIR 1963 Supreme Court 1430**, the Supreme Court has held that the object of Section 202 of the CrPC is to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from there being called upon to face an obviously frivolous complaint.

47. In **Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and others**, reported in **(1998) 5 SCC 749**, the Supreme Court held that 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 scrutinize the evidence brought on record 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.

48. **In Punjab National Bank vs. Surendra Prasad Sinha**, reported in **AIR 1992 SC 1815**, it has been held by the Supreme Court that relevant facts and circumstances should be considered before issuing the process under Section 204 of the CrPC because Judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as vendetta to harass the person needlessly.

49. **In Subrata Roy Sahara Vs. Union of India & Ors.**, reported in **(2014) 8 SCC 470**, in a slightly different context, the Supreme Court discussed the menace of frivolous litigation. It observed that the Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-

considered claims. Relevant portion of the said judgment are as under:-

“191. Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault ?

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194. Does the litigant concerned realize that the litigant on the other side has had to defend himself, from court to court, and has had to incur expenses towards such defence ? And there are some litigants who continue to pursue senseless and ill-considered claims to somehow or the

other defeat the process of law.”



50. Having considered the relevant provisions of the CrPC, the Indian Evidence Act and the ratio laid down by the Supreme Court in the cases discussed above, this Court is of the view that the learned Magistrates dealing with criminal cases should always keep in mind that when the judicial process is used for an illegitimate purpose such as harassment, extortion, exploitation or delay, the party that is subject to the abuse suffers harm, as does the judicial system in general. One of the ways of abusing the judicial process in criminal justice system is by filing frivolous and vexatious complaint. The practice of bringing absolutely wanton and vexatious complaints by persons of no responsibility whatever has now become such a scandal that the time has arrived to, when the learned Magistrates must rise to the occasion to ensure that unscrupulous complainant do not recklessly abuse the judicial process. A judicially trained mind is expected to indentify frivolous and vexatious complaint launched by some unethical, tricky conscienceless, dissolute, exploitative and aberrant litigants. A casual approach of the learned Magistrates in dealing with criminal complaints cheers up and revitalize the unscrupulous and unprincipled litigants, like the complainant of the present case.

51. I am also of the opinion that a sensitive and

committed approach of the Judicial Magistrates in appreciating the facts of the case and law involved therein, before passing any order, is indispensable to the criminal justice system.

52. Before parting with, I must record that the present complaint has been filed only with an express intent to humiliate, harass and blackmail the petitioners. The learned Magistrate ought to have considered the consequences of a vexatious complaint before passing the impugned order and remained vigilant with regard to the nature of allegation made and should not have issued process in a mechanical manner as it creates very contaminating and unhealthy situation and reflects the erroneous approach of the court.

53. In view of the discussions made, hereinabove, Complaint Case No. 2025(C) of 2015 and the entire proceedings arising out of the said complaint are hereby quashed.

54. The application stands allowed, accordingly.

(Ashwani Kumar Singh, J.)

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