

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-33299-2012 (O&M)
Date of decision : 02.05.2019

J.P. Garg and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Verma, Advocate for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab.

ANIL KSHETARPAL, J. (ORAL)

Petitioner has been summoned in complaint filed under Sections 3(k) (i), 17, 18, 29, 33 of Insecticide Act, 1968. Order reads as under:-

“Complaint u/s 3(k) (i), 17, 18, 29, 33 of Insecticide Act, 1968 read with Rule 27(5), Insecticide Rules, 1971 has been presented today. It be registered. As the present complaint has been presented by Public Servant, therefore, recording of preliminary evidence of complainant is dispensed with as per provision u/s 200 (1) Cr.P.C. Let notice to accused be issued for 25.08.2012.”

Learned counsel for the petitioners submits while relying upon

the judgment passed by this Court in the case of **Sajeev Kumar Sharma Vs. State of Punjab, 2006(3) RCR (Criminal) 894**, that summoning order required to be passed under Section 204 of the Code of Criminal Procedure has to be based on opinion and reasons assigned by the Court duly fortified by the process of reasoning clearly discernible from the order. Operative part of the judgment reads as under:-

“9. The process of summoning, is set into motion by an order passed under section 204 Criminal Procedure Code. The said statutory provision, uses two expressions”... if in the opinion of a Magistrate...” and ...” there is sufficient ground for proceeding...” These expressions, leave no manner of doubt, as to the nature of an order required to be passed. The essence of an order of summoning, is the opinion recorded and the reasons assigned duly fortified by a process of reasoning, clearly discernible from the order. The only discretion, available to Magistrate, is to dispense with the examination of a public servant or his witnesses, in terms of the first proviso to Section 200. This proviso does not suggest that in a complaint filed by a public servant acting or purporting to act in the discharge of his official duties, the Court is absolved of its statutory obligation to pass a reasoned judicial order, while summoning an accused. Contention, raised by counsel for the respondent that where a complaint is filed by a public servant, the Court need not record reasons for summoning, in my considered opinion, does merit acceptance. There is no statutory sanction or legal basis for such an argument.”

Learned counsel appearing on behalf of the State has submitted that order is a reasoned order as the Court has considered the

contents of the complaint.

A reading of the order reproduced above does not support the contention of the learned counsel for the State.

In view thereof, order under challenge is set aside.

Matter is remitted back to the learned Sub Divisional, Judicial Magistrate, Nakodar to pass fresh order in accordance with law.

State of Punjab through its counsel is directed to appear before the trial Court on 20.05.2019.

In view of the above, the present petition is allowed.

02.05.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No