

**CRM-M-4240-2019 and other connected petitions**

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

**Date of Decision:05.03.2020**

**1. CRM-M-4240-2019 (O & M)**

Sanjay Khanna and another

... Petitioners

Versus

M/s Satya & Company

... Respondent

**2. CRM-M-4401-2019 (O & M)**

Sanjay Khanna and another

... Petitioners

Versus

M/s Satya & Company

... Respondent

**AND**

**3. CRM-M-4719-2019 (O & M)**

Sanjay Khanna and another

... Petitioners

Versus

M/s Shri Shyam Enterprises

... Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Vaibhav Narang, Advocate,  
for the petitioners in all the petitions.

Mr. Sanjeev Kumar Bawa, Advocate,  
for the respondent.

**CRM-M-4240-2019 and other connected petitions**

**HARNARESH SINGH GILL, J.**

This order of mine shall dispose of the above mentioned three petitions as identical questions of facts and law are involved therein.

Prayers in all these petitions i.e. CRM-M-4240-2019, CRM-M-4401-2019 and CRM-M-4719-2019, have been made for quashing of criminal complaints No.1708/1/15/RBT No.CC.5567 of 2016 dated 15.01.2015, titled as M/s Satya & Company Vs. M/s Adigear International and others', No.9334/2014/RBT/5572 of 2016 dated 01.11.2014, titled as 'M/s Satya & Company Vs. M/s Adigear International and others' and No.9335/2014/RBT/5067 of 2016 dated 09.11.2014, titled as 'M/s Shri Shyam Enterprises Vs. M/s Adigear International and others', respectively, filed under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act') alongwith all the subsequent proceedings arising therefrom qua the petitioners, on the ground that neither any preliminary evidence was led by the complainant nor any summoning order was passed, whereas non-bailable warrants were straightway issued against the petitioner, which had been recalled in CRM-M-4240-2019 and CRM-M-4719-2019.

For the facility of reference, the facts are being taken from CRM-M-4240-2019.

Facts of the case, in brief, are that the respondent/complainant-M/s Satya & Company filed a complaint under Sections 138, 141 and 142 of the N.I.Act on the ground that the petitioners were in business transactions with it, but due to some differences, the business relationship had ended.

**CRM-M-4240-2019 and other connected petitions**

After the termination of contract, full and final settlement of account took place on 19.04.2013 and in this regard, a receipt dated 19.04.2013 was also executed, vide which petitioner No.1 alongwith other accused had accepted the legal liability/debt of Rs.17,89,416/-. Accordingly, cheque No.821045 dated 15.05.2013, amounting to Rs.5,96,472/-, cheque No.821046 dated 25.05.2013, amounting to Rs.5,96,472/- and cheque No.821047 dated 10.06.2013, amounting to Rs.5,96,472/- were issued by petitioner No.1 and co-accused Prannath Khanna, to clear the aforesaid legal liability towards the complainant. Out of the aforesaid three cheques, two cheques were dishonoured when presented for encashment. A complaint qua the same was filed, which was referred to the Mediation Centre, Gurgaon, where a compromise was effected between the parties on 04.04.2014. In that compromise, petitioner No.1 and co-accused issued several cheques, amounting to Rs.12,92,944/-, in favour of the complainant. However out of them, cheques issued of first three months got dishonoured following which the accused persons had issued demand drafts. Later, when other cheques bearing No.868869 dated 25.10.2014 and No.868870 dated 25.11.2014, were presented for encashment, the same got dishonoured with the remarks "Insufficient Funds". Thereafter, the petitioners alongwith co-accused was served with the legal notice, but to no avail.

Learned counsel for the petitioners contended that without recording preliminary evidence, non-bailable warrants had been issued which had been recalled in CRM-M-4240-2019 and CRM-M-4719-2019 by observing that the same had been issued inadvertently. The learned counsel further argued that issuance of summons, including non-bailable warrants,

**CRM-M-4240-2019 and other connected petitions**

which had been recalled, without recording the preliminary evidence and without examining the complainant, was not in accordance with law and, therefore, the complaints and subsequent proceedings arising therefrom, are liable to be quashed in respect of the petitioners.

Still further, the learned counsel for the petitioners argued that the Magistrate had not applied his mind judiciously. Since the judicial notice has not been taken, the complaints alongwith subsequent proceedings arising therefrom, are liable to be set aside. The Magistrate has to satisfy himself either by examining the complainant and the witnesses or by the inquiry contemplated under Section 202 Cr.P.C. In support of his contentions, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in Adalat Prasad Vs. Rooplal Jindal, 2004 (4) RCR (Criminal) 1, wherein it was held as under:

*“12. Section 200 contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present if any. If on such examination of the complaint and the witnesses, if any, the Magistrate if he does not want to postpone the issuance of process has to dismiss the complaint under Section 203 if he comes to the conclusion that the complaint, the statement of the complainant and the witnesses has not made out sufficient ground for proceeding. Per contra if he is satisfied that there is no need for further inquiry and the complaint, the evidence adduced at that stage has materials to proceed, he can proceed to issue process under Section 204 of the Code.”*

**CRM-M-4240-2019 and other connected petitions**

Per contra, the learned counsel for respondent No.1-complainant has vehemently opposed the contentions raised by the learned counsel for the petitioners and contended that the Magistrate can allow both, the complainant and accused, to give evidence on affidavit for speedy disposal of case and the Magistrate shall scrutinize the complaint accompanied by the affidavit and to take cognizance and it is not necessary for the Magistrate to record the words “cognizance taken”. In support of his contentions, the learned counsel relied upon the judgments of the Hon'ble Supreme Court in the cases of Indian Bank Association and others Versus Union of India and others 2014(2) R.C.R. (Criminal) 598 and CREF Finance Ltd. Vs. Shree Shanthi Homes Pvt. Ltd. and another 2005(4) R.C.R.(Criminal) 26.

I have heard the learned counsel for the parties and with their able assistance, have also gone through the record on the file.

Section 200 Cr.P.C. reads 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*

**CRM-M-4240-2019 and other connected petitions**

*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.*

From the bare reading of Section 200 Cr.P.C., it is mandatory for the Magistrate to examine upon oath the complainant and the witnesses and only exemption has been given for non-examination of the complainant and the witnesses, if the complaint is filed by a public servant acting or purporting to act in the discharge of his official duties or if the Magistrate makes over the case for inquiry.

In the present case, neither the complaint was filed by the public servant nor any inquiry has been initiated by the Magistrate before proceeding with the complaint. The complainant was not examined which shows that the Magistrate had not judiciously applied his mind, meaning thereby, mere examination of the complainant is not enough but taking of judicial notice by the Magistrate is also mandatory before passing the summoning order.

“*Cognizance of offence*” means taking notice of the accusation and applying the judicious mind which can only be done by examination of the complainant because when the complainant is being examined, at that stage the Magistrate is merely gathering the material on the basis of which

### CRM-M-4240-2019 and other connected petitions

he is to decide whether or not a prima facie case is made out for taking the cognizance of the offence and the Magistrate cannot be said to have *ipso facto* taken the cognizance.

A three Judge Bench of the Hon'ble Supreme Court in the case of [R.R. Chari Vs. State of Uttar Pradesh](#), 1951 SCR 312, while considering what the phrase 'taking cognizance' means, approved the decision of Calcutta High Court in [Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Abani Kumar Banerjee](#), AIR 1950 Calcutta 437, wherein it was observed that:

*"...What is "taking cognizance" has not been defined in the Criminal Procedure Code and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a), Criminal P.C., he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter,— proceeding under S. 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence..."*

The same view was reiterated by the Hon'ble Supreme Court in in [Jamuna Singh & Ors. vs. Bhadai Sah](#), (1964) 5 SCR 37 and [Nirmaljit Singh Hoon vs. State of West Bengal & Anr.](#), (1973) 3 SCC 753.

**CRM-M-4240-2019 and other connected petitions**

The Hon'ble Supreme Court in S.R.Sukumar Vs. S. Sunaad Raghuram 2015(3) R.C.R.(Criminal) 570, has held that for taking cognizance of an offence on complaint, the Court shall examine the complainant upon oath and must have judiciously applied the mind to the contents of the complaint and indicates that the Magistrate takes judicial notice of an offence.

Since the abovesaid mandatory procedure has not been adopted by the Magistrate in the case in hand, the complaints alongwith all the subsequent proceedings arising therefrom, are liable to be quashed qua the petitioners.

In view of the above, all the petitions are allowed. Criminal complaints No.1708/1/15/RBT No.CC.5567 of 2016 dated 15.01.2015, titled as M/s Satya & Company Vs. M/s Adigear International and others', No.9334/2014/RBT/5572 of 2016 dated 01.11.2014, titled as 'M/s Satya & Company Vs. M/s Adigear International and others' and No.9335/2014/RBT/5067 of 2016 dated 09.11.2014, titled as 'M/s Shri Shyam Enterprises Vs. M/s Adigear International and others', and all the subsequent proceedings arising therefrom are quashed qua the petitioners.

**05.03.2020**

parveen kumar

**(HARNARESH SINGH GILL)**  
**JUDGE**

|              |                           |   |        |
|--------------|---------------------------|---|--------|
| <b>Note:</b> | Whether speaking/reasoned | : | Yes/No |
|              | Whether reportable        | : | Yes/No |