

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**CRR 2997 of 2019
With
CRR 3241 of 2019
With
CRR 3244 of 2019**

**Rupayan Bhattacharya
Vs.
The State of West Bengal & Anr.**

For the petitioner	:	Mr. Ayan Bhattacharya
In CRR 2997 of 2019		Mr. Md. Zohaib Rauf
		Ms. Ritu Das

For the Petitioner	:	Mr. Sandipan Ganguly
In CRR 3241 of 2019		Mr. Somopriyo Chowdhury
In CRR 3244 of 2019		Mr. Soumitra Dutta

For the Opposite party	:	Mr. Moyukh Mukherjee
		Mr. Kaustov Lal Mukherjee
		Mr. Abhijit Singh

Heard on	:	20.12.2022
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Judgment on	:	10.01.2023
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Ajoy Kumar Mukherjee, J.

1. Since issue involved in all the three cases are same, the aforesaid three revisional applications are disposed of by this common order.

2. Being aggrieved and dissatisfied with the order dated 6th July, 2019 and 19th August, 2019 passed by learned Judicial Magistrate, 1st Court, Sealdah in case no. C-208 of 2019, the present application under Section 482 of the Code of Criminal Procedure has been preferred.

3. The petitioner contended that the opposite party herein filed a complaint before the Magistrate concerned alleging the commission of offence punishable under Section 499/500/501/502/120B of the Indian Penal Code against the accused persons including the petitioners of the respective cases, inter alia on the allegations to the effect that accused persons with malicious dubious malevolent and spiteful determination, bearing clear mens rea, published libellous news attacking opposite party no.2 in their newspaper. The learned Additional Chief Judicial Magistrate (hereinafter called as ACJM) vide order dated 6th July, 2019 was pleased to take cognizance of the offence and fixed the next date on 12th July, 2019 for service return and appearance. Thereafter, vide order dated 12th July, 2019, the learned Additional Chief Judicial Magistrate, Sealdah took on record the original affidavit in chief of the complainant/opposite party no. 2 and transferred the original case record to the learned Magistrate 1st Court, Sealdah, who fixed 19th August, 2019 as the date for appearance. It is alleged that on 19th August, 2019, the aforesaid trial Magistrate purportedly examined the witnesses of the opposite party no. 2 under Section 200 of the Code of Criminal Procedure without following its mandate properly and issued process against the petitioners of the respective cases along with other accused persons mechanically without having application of mind.

4. The petitioners further contended that the petitioners are innocent and no way connected with any offence far less the offence alleged in the complaint. They also submit that on June 21, 2019 one Sumanta Chowdhury@ Nanti, a resident of the ward which the opposite party no. 2 represented in the Kolkata Municipal Corporation, alleged that the opposite party no. 2 had extracted money by way of “Tola” (extortion) and said allegation was covered by various electronic and print media and was allegedly headline in most of the newspaper of the state on the next date. The reporters of the respective newspapers had recorded the entire statement made by the said citizen on video and they sent it to opposite party no. 2 by whatsapp to which the opposite party no. 2 offered his comments. The said reporters also talked to the opposite party no. 2 and took his comments verbally and the said call was also recorded. It is further alleged that the concerned newspapers published an article quoting verbatim the allegations levelled against the opposite party no. 2, also the denial of the same and comments/clarifications offered by the opposite party no. 2. The petitioners further submit that from the impugned complaint, it would be evident that there is no specific allegation against the petitioners quo their knowledge of publication of such report.

5. The petitioners further submit that it is trite law, that in absence of specific allegation thereby showing some overt act and/or omission, no person can be implicated in a criminal proceeding. The offence of defamation being essentially civil in nature cannot be attributed to the petitioners in case of *bonafide* reporting of an incident which has in fact, alleged to have taken place. They further submit that according to the Ninth Exception of Section

499 of the Indian Penal Code, it is not defamation to make imputation which is made in good faith by person for the protection of his interest or other's interest. It is further alleged that from the facts and circumstances of the case, it is evident that the petitioners herein have only reported the admitted facts which are subject matter of police investigation and such reporting therefore by no figment of imagination can give rise to a criminal cause of action.

6. They further submit that the freedom of press and media is a part of freedom of speech as guaranteed under Article 19 of the Constitution of India and is a part of the right to know of citizens.

7. In all the aforesaid three cases, the petitioners have raised a preliminary issue which needs to be discussed before going to the merits of the case. In all the three cases, they submit that the learned trial Magistrate has erred in conducting the examination under Section 200 of the Code of Criminal Procedure of the opposite party no. 2/complainant and his witnesses through affidavits. The petitioners in the said cases submit that according to Section 1 of the Indian Evidence Act 1872, an affidavit is not an evidence. It is only under Sections 292/293/295 and 296 of the code, an affidavit can be accepted by a court of law as evidence. Since the examination of the opposite party no. 2 and his witnesses do not fall within either of the parameters of the above enactments, such examination therefore cannot be conducted by way of an affidavit. The petitioners of the said three cases submit that from the purported examination of the opposite party no. 2 under Section 200 of the Code, it would be evident that such examination is in complete disregard to

the provision of Section 200 of the Code, which is an important step in the pre-summoning inquiry.

8. They further submit that such examination is held in order to corroborate the allegations levelled in the complaint. When the complainant during his examination under Section 200 of the Code, fails to corroborate the allegations of the complaint, no reliance can be placed on such purported examination. According to the petitioners since the order of issuance of process under Section 204 of the Code was passed inter alia on the basis of examination of the complainant by way of affidavit, the issuance of process is therefore illegal, unsustainable in the eye of law.

9. Accordingly, before going to further details of the case, this preliminary point raised by the petitioners in all the three cases, need to be discussed first, as to whether filing of an affidavit supporting substance of complaint by the complainant in the place of sworn statement, in support of his complaint would be treated as contrary to the procedure laid down under Section 200 of the Code and whether such defect, if any, is curable being irregular proceeding under Chapter XXXV of the Code.

10. In this context learned counsel appearing on behalf of opposite party Mr. Mukherjee submits that verification on oath of substance of complaint by complainant before magistrate is a sufficient compliance with the provisions of section 200. The omission to record sworn statement by Magistrate will at the most, amount to an irregularity of the description covered by section 200 of the code. He further submitted that affidavit can be used in the place of sworn statement in this regard and for this purpose there is no distinction between

the affidavit and the sworn statement to satisfy the requirement laid down in section 200. He further submits that there is no express bar in section 200 or any other provision in the code, that examination of complaint cannot be made by way of filing affidavit.

11. In this context for a proper appreciation of the issue, let me reproduce Section 200 of the Code first, which runs as follows:-

“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.”

Section 4 (1) and (2) of Section 5 of the Code states as follows:

“4. Trial of offences under the Indian Penal Code and other laws.

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

“5. Saving. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

12. Conjoint reading of those provisions makes it clear that the Magistrate who takes cognizance of an offence is required to examine the complainant

and the witnesses on oath and thereafter he has to reduce the substance of the examination in writing and is to be signed by the complainant and the witnesses before the Magistrate and the substance of examination in writing is to be signed by the Magistrate also.

13. In this context it would not be out of context to refer Rule 89 of the Calcutta High Court Criminal (Subordinate courts) Rules, 1985 which runs as follows:

“ (1) A Magistrate taking cognizance of an offence on complaint shall, wherever necessary under the Code, examine upon oath the complainant and the witnesses present, if any, and it shall be made clear in his order that he has done so.

(2) The examination of all the witnesses presented by the complainant shall be recorded instead of recording such remarks as “corroborate the complainant” or “corroborates the other witnesses” etc.

(3) The examination of the complainant and his witnesses shall not be taken to be a mere formality and they shall be examined intelligently and in such manner as to enable the Magistrate to determine whether there is prima facie sufficient ground for proceeding.”

14. So the provision as laid down under Section 200 of the Code and also the rules framed by this court as above, makes it clear that the examination of the complainant and his witness under Section 200 of the Code shall not be taken to be a mere formality but they are to be examined intelligently and in such manner as to enable the Magistrate to determine whether there is prima facie sufficient ground for proceeding.

15. In the above backdrop, let me examine the object of laying down procedure in Section 200 of the Code in Chapter XV under the heading “Examination of Complaint”, before proceeding further either under Section 202/203 or to take recourse under the next Chapter namely Chapter XVI of the Code. So here the Magistrate have dual responsibility, under Section 200

of the Code. Recording of substance of examination will have to be reduced in writing and substance of such examination are to be signed by the complainant and the witnesses and also by the Magistrate. Accordingly, conjoint reading of Section 200 and 204 makes it clear that in order to form an opinion by the Magistrate after taking cognizance that there is sufficient ground for proceeding under Section 204 of the Code, the examination of complainant as laid down under Section 200 of the Code, played a very crucial role. This is also because the term used in Section 200 of the Code is “shall” and as such the question of taking leniency or what would be convenient for the Magistrate, is not to be looked into, while such examination would be made.

16. In Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate & others reported in **(1998) 5 SCC 749**, it was held by the apex court in paragraph 28.

“28. 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 scrutinise 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.”(emphasis added).

17. The principle that summoning an accused, in a criminal case, is a serious matter and that as a matter of course, the criminal case against the person cannot be set into motion was reiterated in ***GHCL employees stock Trust Vs. Infoline Ltd.*** reported in **(2013) 4 SCC 505.**

18. Accordingly the reference under Section 200 of the Code about examination of complaint has been incorporated with the primary object of satisfaction of Magistrate that according to the Magistrate's opinion, there is "sufficient ground for proceeding". This is also because summoning in a proceeding to appear as an accused in a criminal proceeding, is a serious matter affecting one's dignity and prestige in the society. Though at the stage of issuance of process to the accused, the Magistrate is not required to record detailed orders but Magistrate is required to be prima facie satisfied that there are sufficient grounds for proceeding against the accused. While taking recourse under Section 204 of the Code, there has to be application of mind as to whether the allegation in the complaint constitutes ingredients of the offence and whether there are sufficient grounds for proceeding against the accused. The scope of examination under Section 200 is to find out the truth or otherwise about all the allegations made in the complaint, in order to determine whether process has to be issued or not.

19. In the light of above objectives of section 200 of the code let me consider the issue namely the examination of the complainant contemplated in Section 200 of the Code, which signifies that the Magistrate ought to interrogate him on the allegations or averments contained in the complaint, to test whether they are prima facie true or not. Where simply the contents of the complaint

are admitted by the complainant to be correct on solemn affirmation by the complainant by way of filing affidavit that cannot be said to be examination of the complainant either on oath or otherwise. In such cases, what the complainant has done by filing an affidavit is to state before the court that the averments made in the complaint are true which cannot be the object of incorporating Section 200 of the Code under the heading “examination of complaint”.

20. Mr. Mukherjee learned counsel for the opposite party no. 2 submits that verification on oath of a complaint before a magistrate is a sufficient compliance with the provisions of Section 200 of the Code. He further submits that the omission to examination will at the most amount to an irregularity of the description mentioned in Section 200 of the Code which is a curable defect. He further submits that Section 145 of the Negotiable Instrument Act (in short N.I. Act) provides such examination of complaint by filing an affidavit and under Section 294 of the Code, such examination by filing affidavit has also been recognized. Accordingly, learned court below has not committed any error in accepting the affidavit of examination filed by the complainant and as such the order impugned does not call for any interference.

21. I am unable to accept the contention made by the learned counsel appearing on behalf of the opposite party because if it had been the intention of the legislature to accept the affidavit-in-chief as a mode of examination of complainant in the perspective of complaint, necessary amendment would have been made in the Code itself. Section 296(2) deals with evidence of formal character on affidavit where the accused had the opportunity to cross-

examine the witnesses. Moreover, the section applies only in case where the evidence is of a formal nature. Similarly, Section 145(2) starts with a non-obstante clause and as such, legislature has made it clear that for a particular purpose of simpler and swifter trial, procedure in the N.I. Act cases, such departure has been incorporated in the Act by way of subsequent amendment which is in consonance under Section 4(2) of the Code.

22. Apart from that principally also the examination of the complainant in the code as prescribed in Section 200, is justified because it may be that when a complainant is examined on oath by the Magistrate, more facts are likely to be brought on record than which are originally obtained from a complaint. While the examination is made orally, it certainly elucidate matters to a great extent and when it has been reduced in writing such examination would certainly clarify the situation so that the Magistrate can apply his judicial mind, as to whether there exists sufficient reasonable grounds for proceeding further. Moreover, such failure on the part of the Magistrate to observe the mandatory provision of the Code about examination of complainant on oath is not a mere error, omission or irregularity on the part of the Magistrate but it is a non-observance of a mandatory provision of law, the infraction of which is a disregard of an express provision of law as to the mode of inquiry and as such, could not be remedied under Chapter XXXV of the Code.

23. At the cost of repetition it can be said that by reading Section 200 of the Code of Criminal Procedure it is clear that the Magistrate who takes a cognizance of an offence is required to examine the complainant and his witnesses on oath and thereafter, he has to reduce the substance of the same

in writing and is to be signed by the persons who make the statement and also by the Magistrate. If the examination is made by filing affidavit, the contents does not require to be recorded by the Magistrate. The affidavit by itself is a mere declaration on oath by the complainant which is not required to be signed by the Magistrate. Accordingly, when a specific procedure is contemplated for examination of the complaint under Section 200 of the Code, it cannot be deviated by the Magistrate, adopting some other procedure, which has not been prescribed or which has not been incorporated by the legislature by way of amendment.

24. Even if, there might be reason for the Magistrate due to workload of cases to examine complainant by way of affidavit which may also appear to be convenient for the Magistrate, but for that the Magistrate can not deviate the procedure prescribed in Section 200 of the Code by adopting a different mode, when he is required to form a definite opinion from such examination that there exists or not sufficient ground for proceeding against the accused under the Code. The purpose of recording the substance of sworn statement by the Magistrate is enumerated in Section 200 is to enable the Magistrate to satisfy himself of the allegation in the complaint to proceed further in the matter. Accordingly, under the section it is desirable that the Magistrate shall himself examine the complainant and the witnesses and record the substance of the same in writing. He is duty bound and under an obligation to reduce the recoding of substance of the statement in writing which is to be signed by him and also by the complainant and the witnesses.

25. Accordingly I am of the view that Section 200 of the Code does not contemplate acceptance of affidavit as an alternative of sworn statement nor affidavit can take the place of sworn statement as required under Section 200 of the Code. In fact, such examination under Section 200 does not prescribe for any cross-examination nor it requires recording of the statement at the instance of an advocate but it is a statement made only before the Magistrate for his satisfaction and as such, filing of affidavit by the complainant in support of his complaint would be contrary to the procedure under Section 200 of the Code. In this context, it would not be out of context to mention the observation made by the Apex Court about the reason for departure and override the provision as incorporated in Section 143 to 147 of the N.I. Act and also the purpose of incorporating Section 296 of the Code in ***Mandvi Cooperative Bank Limited vs. Nimesh B. Thakore*** reported in **(2010) 3 SCC**

83. Paragraph 21 and 39 of the said judgment runs as follows:-

“21. It is, however, significant that the procedure of summary trials is adopted under Section 143 subject to the qualification “as far as possible”, thus, leaving sufficient flexibility so as not to affect the quick flow of the trial process. Even while following the procedure of summary trials, the non obstante clause and the expression “as far as possible” used in Section 143 coupled with the non obstante clause in Section 145 allow for the evidence of the complainant to be given on affidavit, that is, in the absence of the accused. This would have been impermissible (even in a summary trial under the Code of Criminal Procedure) in view of Sections 251 and 254 and especially Section 273 of the Code. The accused, however, is fully protected, as under sub-section (2) of Section 145 he has the absolute and unqualified right to have the complainant and any or all of his witnesses summoned for cross-examination.”

“39. Moreover, the crucial difference between Section 296(2) of the Code and Section 145(2) of the Act is that the former deals with the evidence of a formal nature whereas under the latter provision, all evidences including substantive evidence may be given on affidavit. Section 296 is part of the elaborate procedure of a regular trial under the Code while the whole object of Section 145(2) of the Act is to

design a much simpler and swifter trial procedure departing from the elaborate and time-consuming trial procedure of the Code. Hence, notwithstanding the apparent verbal similarity between Section 145(2) of the Act and Section 296(2) of the Code, it would be completely wrong to interpret the true scope and meaning of the one in the light of the other. Neither the legislative history of Section 296(2) nor any decision on that section can persuade us to hold that under Section 145(2) of the Act, on being summoned at the instance of the accused the complainant or any of his witnesses should be first made to depose in examination-in-chief before cross-examination.”

26. In this context, it is also to be remembered that the Code of Criminal Procedure is an Act to consolidate and amend the law relating to criminal procedure.

27. Maxwell on The Interpretation of Statutes suggests that in incorporating a consolidating Act, account is taken of judicial decisions on provisions contained in the statute now codified. One has to remember that Parliament must be taken to have been aware of the decisions of the Courts in the meantime.

28. In ***Soumitra Sen Vs. State of W.B.*** reported in **2013 SCC Online Cal 16308** the Apex Court was of the clear view that the settled law is that when a thing has to be done in a particular manner, it must be done in that manner or not at all. Here also there is sufficient scope to say that the accused might suffer prejudice due to such illegal summary procedure being adapted by the court below deviating from the prescribed procedure. The same view has also been reiterated in another judgment by the Apex Court in ***Cherukuri Mani Vs. Chief Secretary, Government of Andhra Pradesh and Others*** reported in **(2015) 13 SCC 722** which says where the law prescribed a thing to be done in particular manner following a particular procedure it shall be done in the same manner following the provisions of law without deviating from the prescribed

procedure. Accordingly, one should not ignore the underline object behind incorporating Section 200 of the Code under the heading “examination of complaint” with the sole purpose that the Magistrate must apply his judicial mind and thereby satisfying himself about the allegations leveled in the complaint before proceeding further with the case. While ordering issuance of process against the accused, the Magistrate must take into consideration the averments in the complaint, statement of the complaint examined on oath and the statement of witnesses examined. As held in **Mehmood ul Rehman Vs. Khazir Mohammad Tunda and others** reported in **(2015) 12 SCC 420**, since it is a process of taking a judicial notice of certain facts which constitutes an offence, there has to be application of mind whether the materials brought before the court would constitute the offence and whether there are sufficient grounds for proceeding against the accused. It is not a mechanical process.

29. In **Competition Commission of India Vs. Steel Authority of India Limited & Another** reported in **(2010) 10 SCC 744**, Supreme Court held that the best norm to interpret would be to give literal construction keeping the legislative intent in mind. It is a settled rule of construction of statute that the provisions should be interpreted by applying plain rule of construction and the courts normally would not imply or adopt another mode which is not consistent with the words expressly used in the Section. In paragraph 60 and 61 of the said judgment it was observed as follows:-

“60. Expressum facit cessare tacitum—express mention of one thing implies the exclusion of other. (Expression precludes implication). This doctrine has been applied by this Court in various cases to enunciate the principle that expression precludes implication. (Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : AIR 1985 SC 1416] .) It is always safer to apply plain and primary rule of construction. The first and

primary rule of construction is that intention of the legislature is to be found in the words used by the legislature itself. The true or legal meaning of an enactment is derived by construing the meaning of the word in the light of the discernible purpose or object which comprehends the mischief and its remedy to which an enactment is directed.”

“61. It is always important for the court to keep in mind the purpose which lies behind the statute while interpreting the statutory provisions. This was stated by this Court in Padma Sundara Rao case [(2002) 3 SCC 533 : AIR 2002 SC 1334] as under : (SCC p. 542, para 12)

“12. ... The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. ‘Statutes should be construed, not as theorems of Euclid’, Judge Learned Hand said, ‘but words must be construed with some imagination of the purposes which lie behind them’. (See Lenigh Valley Coal Co. v. Yensavage [218 FR 547] .) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama”

30. In this context, it has to be mentioned that the aforesaid issue was also came up before different High Courts time to time and Co-ordinate Bench of different High Court are of the consistent view that the Magistrate in such cases is duty bound to examine the complainant on oath and his witness before issuance of process.

31. In an earlier judgment in **P.N.S. Aiyar Vs. K.J. Nathan** reported in **AIR (35) 1948 Madras 424**, the High Court was pleased to observe in paragraph 6 as follows:-

“6.The failure by the Magistrate to observe this mandatory provision of the Code cannot be cured, in my opinion, by S. 537 of the Criminal Procedure Code. The non-examination on oath is not an error, omission or irregularity in the complaint. It is a non-observance of a mandatory provision of law, the infraction of which, is, according to the decision of their Lordships of the Judicial Committee in Subramania Iyer v. King Emperor [\[3\]](#), a disregard of an express provision of law as to the mode of enquiry and as such was not a mere irregularity such as could be remedied by S. 537 of the Criminal Procedure Code. It is an illegality which goes to the very root of the proceedings. I am therefore of opinion that the learned Chief Presidency Magistrate has erred in law in not complying with the provisions of S. 202 of the Criminal Procedure Code. The order of the learned Magistrate is set aside and he is directed to enquire into the

matter afresh by examining the complainant on oath and dispose of the complaint according to law, in the light of the observations in this judgment.”

32. In **Sri K. Venkataramaiah and Others vs. Sri Katterao** reported in **Indian Law Reports 2008 Karnataka Series 474**, the High Court while dealing with the similar situation was pleased to observe in paragraph 10 as follows:-

“10. When a specific procedure is contemplated under Section 200 of Cr.P.C., it cannot be deviated by adopting some other procedure which is not prescribed, even though it may be convenient to the complainant. The purpose of recording the substance of sworn statement by the Magistrate is to enable the Magistrate to satisfy himself of the allegation in the complaint to proceed further in the matter. Under Section 200 Cr.P.C., the Magistrate himself examines the complainant and the witnesses and records the substance of the same. The Magistrate is under obligation to reduce the substance of the statement in writing which is to be signed by the complainant and the witnesses. If an affidavit is accepted, it would go contrary to the provisions of Section 200 of Cr.P.C. In my opinion, Section 200 of Cr.P.C. does not contemplate acceptance of affidavit in the form of sworn statement nor affidavit partakes the character of sworn statement as required under Section 200 Cr.P.C. Sworn statement does not require any cross-examination nor requires a recording of the statement at the instance of an advocate. It is not an examination –in-chief, but it is the statement made before the Magistrate for his satisfaction. The filing of an affidavit by the complainant in support of his complaint would be contrary to the procedure under Section 200 of Cr.P.C. and it is inadmissible.”

33. In **M/s. Taish Tex Styles (India) Pvt. Ltd. and others vs. M/s. Kohinoor Impex Inc.** reported in **2009 SCC Online P&H 3099**, the High Court held in paragraph 8 to 10 as follows:-

“8. Mr. Kinra has stated that essential ingredient of the section is that the complainant and his witnesses are to be examined on oath. He has relied upon Maharaja Developers v. Uday Singh Pratap Singh Rao Bhonsle, [2007 Criminal Law Journal 2207] a Division Bench judgment of the Bombay High Court to say that Magistrate is duty bound to examine on oath the complainant and his witnesses before issuance of process.”

“9. Any statement of witness recorded can be used by the complainant subsequently to confront the witness with the previous

statement. Therefore, it was incumbent upon the Magistrate to record the statement of witnesses before issuing the process against the accused.”

“10. *Consequently, summoning order (Annexure P2) is set aside. The matter is remanded back to the Court of the Judicial Magistrate, 1st Class, Ludhiana to proceed afresh with the complaint after following due procedure prescribed under Section 200 Cr. P.C.”*

34. At this stage from the facts and circumstances of the case I am not inclined to interfere with the order dated 06th July, 2019, but in view of above, order dated 19th August and all subsequent orders are hereby interfered with.

35. From the aforesaid discussion, I have no other option but to conclude that the Magistrate is duty bound to examine on oath the complainant and his witnesses before proceeding further except where there are certain express provision, deviating from general rule for such examination.

36. Accordingly the aforesaid proceeding from the stage of examination of complainant under section 200 and issuance of process against accused persons under section 204 of the code i.e. order dated 19.08.2019 and all subsequent orders stands quashed. The criminal revisional applications being CRR 2997 of 2019 with CRR 3241 of 2019 with CRR 3244 of 2019 along with all connected applications are disposed of with the direction that the matters are remitted to the learned Magistrate for recording the sworn statement of the complainant and his witnesses. Liberty is given to the complainant to appear before the Magistrate for sworn statement along with his witnesses, if any.

37. However, I make it clear that I have not gone into the merits of the case and the Magistrate will be at liberty to examine the complainant on sworn statement along with his witnesses, if any, and if the Magistrate is satisfied at materials, he may proceed in the matter without being influenced by any

observations made therein. I have not expressed any opinion whatever on the merits of the complaint.

However, there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJOY KUMAR MUKHERJEE, J.)