

(Supreme Court) 5151”, wherein similar issue was considered by the Hon’ble Supreme Court and the following observations were made:-

“28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 SCC 609, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

3. Learned counsel for the petitioner further submits that from a perusal of the impugned summoning order dated 16.06.2022 (Annexure P-2), it is evident that the Magistrate, while taking cognizance, did not apply his mind in proceeding against the petitioner/accused. In fact, after taking into consideration, the averments made in the complaint and the accompanying documents, the Magistrate has to formulate whether the material on record disclosed the offence or not and he had to pass an order by keeping in view the same. He further submits that the petitioner shall confine his prayer to set aside the summoning order only on this limited ground and reserves his right to raise all other pleas at a later stage, in accordance with law.

4. Learned State counsel has also fairly conceded that while issuance a summoning order, the trial Court has to apply his judicial mind and the impugned order is non-speaking. Consequently, she submits that she has no objection, in case the impugned order is set aside and liberty is granted to the trial Court to pass a fresh order, in accordance with law.

5. In view of the submissions made by learned counsel for the parties, the present petition is allowed, the impugned summoning order dated 16.06.2022 (Annexure P-2) passed by the Court of Chief Judicial Magistrate, Faridabad is ordered to be set aside. The matter is remanded back to the Chief Judicial Magistrate, Faridabad enabling him to pass an order by applying his judicial mind, in view of the principles law laid down by the Hon'ble Supreme Court in the matter of *Lalan Kumar's case (Supra)*.

6. The present petition stands disposed of.

7. Pending application, if any, is also disposed of.

(N.S.SHEKHAWAT)
JUDGE

04.09.2023
hemlata

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No