

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Case : CRM (M) No. 603/2023
CrIM No. 1172/2023**

Kunj Lal alias Sanjay

...Petitioner(s)

Through :- Mr. Ankush Manhas, Advocate.

V/s

Sewa Ram

.....Respondent(s)

Through :- Mr. Rohit Kohli, Advocate.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

10.05.2024

(ORAL)

1. The petitioner through the medium of present petition has challenged order dated 20.08.2021 passed by the learned Judicial Magistrate Ist Class (Munsiff) Kishtwar in a complaint filed by the respondent against him for offences under Section 138 of the Negotiable Instruments Act.
2. Heard and considered.
3. Learned counsel for the petitioner has contended that impugned order dated 20.08.2021 passed by the learned trial Magistrate is not sustainable in law as the learned Magistrate has not even recorded the satisfaction as to what offences are made out against the petitioner.
4. There appears to be merit in the submission of learned counsel for the petitioner. A perusal of the impugned order shows that upon receipt of complaint by the learned Magistrate he has straightway issued a notice to the petitioner without recording the satisfaction as to what offences are made out from the allegations made in the complaint and the material annexed thereto.

5. Issuance of process in a criminal case is a serious business and it has serious consequences upon the person against whom process is issued. Such a person faces a threat of arrest unless he is bailed out by the concerned court. Therefore, while issuing process in a criminal complaint, a Judicial Magistrate is expected to apply his mind to the material before him and thereafter record his satisfaction as to whether any offence is made out and, if so, what offence is made out. It is only thereafter, that the process can be issued against the proposed accused.
6. In the instant case, the learned Magistrate has acted in a mechanical manner and issued process against the petitioner without adhering to the procedure discussed hereinbefore. The impugned order is, therefore, not sustainable in law.
7. For the foregoing reasons, the impugned order passed by the learned Magistrate is set aside. It shall, however, be open to the learned Magistrate to pass a fresh order on the complaint after applying his mind to the material available before him and in the light of observations made hereinbefore.
8. Copy of this order be sent to the learned Magistrate.
9. Disposed of.

(**Sanjay Dhar**)
Judge

JAMMU :
10.05.2024
Pawan Chopra

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No