



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

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CRM-M No.1799 of 2019 (O&M)

Date of decision: 17.03.2025

Sumitra Devi and others

....Petitioners

Versus

Dr. Sandeep Berwal and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jagjeet Beniwal, Advocate
for the petitioners.

Mr. Rishabh Gupta, Advocate
for respondent No.1.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in the present petition filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') is for quashing of complaint bearing No.78 of 2015, instituted on 20.04.2015 titled '*Dr. Sandeep Berwal vs. Dr. Sumitra Devi and others*' (Annexure P-10) registered under Sections 500 and 120-B of the Indian Penal Code, 1860 (hereinafter IPC) pending before learned Judicial Magistrate First Class, Gohana as well as the summoning order dated 25.09.2018 (Annexure P-11).

2. Tersely, the facts of the case are that applications were invited by Bhagat Phool Singh Institute of Teacher Training and Research, Khanpur Kalan, Sonapat for aspirants seeking admission in Ph.D (Education). The entrance exam for the academic year 2010-2011

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was scheduled to be conducted on 29.06.2010. The issue arose when the respondent no. 1 on routine check found petitioner no. 1 absent without notice on two occasions i.e 26.11.2008 and 20.04.2010 and informed the same to the Vice Chancellor. Thereafter, on 16.04.2010, complainant was threatened by petitioner no. 1 to implicate him in false and frivolous case and pressurized by the then Vice Chancellor to withdraw the complaint (*supra*). However, on 02.06.2010 respondent no. 1 wrote a letter to the Vice- Chancellor, intimating that since his wife is one of the applicants, therefore, the task of superintendence be allotted to the next senior teacher i.e. Dr. Suman Dalal (Petitioner no. 2). In consequence thereof, petitioner no. 2 was appointed as convener to supervise the affairs of entrance examination. After the exam was conducted, one of the candidates anonymously moved a complaint (Annexure P-4) to Vice Chancellor B.P.S.M. Vishwavidyalaya, along with Governor and Chief Minister, Haryana concerning the malpractice in Ph.D. entrance exam. On 05.07.2010 the complainant wrote a confidential letter to the Vice Chancellor wherein he sought comments from petitioner no. 1 on irregularity in evaluation of the test booklets for admission to D.Ed programme and display of unauthorized merit list. Subsequently, the Vice Chancellor constituted a committee of three members comprising of petitioner no. 5, 6 and 7 to investigate the issue involved in bugling of Ph.D. admissions. Pursuant to that the report was submitted on 14.12.2010 (Annexure P-8) after considering the statements of all the staff members on examination duty and released

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the merit list and furnished their opinion to the Vice Chancellor. Afterwards, Sh. C.K. Kapahi former Dy. Secretary was appointed to conduct the inquiry. On completion of the inquiry, report was submitted on 26.07.2012 whereby he recommended that the result of Ms. Renu Bala (wife of respondent no. 1) be declared as null and void. The complaint (*supra*) was instituted by respondent no. 1 alleging that the petitioners in connivance with each other, in order to wreak vengeance made a complaint to the Vice Chancellor with the ulterior motive to blemish the career of wife of respondent no. 1, and tarnish the reputation of the respondent no. 1 and his wife.

3. The learned counsel for the petitioners *inter alia* contends that the impugned order dated 25.09.2018 (Annexure P-11) has been passed in a most cryptic fashion without satisfying the objective standards of reason and justice. Learned counsel further submits that the learned Court below has issued notice to the petitioners without applying judicial mind and without duly considering the facts and evidence as it is mandatory that *prima facie* case be made out before summoning the person as an accused. Learned counsel for petitioners further contends that the complaint (*supra*) was instituted as a counterblast to pressurise the petitioners refraining them from saying anything incriminating against respondent no. 1. Further, no derogatory statement was either published or any act was performed to constitute the offence of defamation under section 500 of IPC.

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4. *Per contra* the learned counsel for the respondent no. 1 in reply dated 05.03.2025, contends that the petitioners in connivance with each other conspired to defame the respondent no. 1 and his wife. Learned counsel further submits that the respondent no. 1 was initially appointed as a Reader in 2008 and subsequently got promoted to the post of Head of the Department and Dean of Faculty whereby the petitioners were also contesting for the same position. Learned counsel for respondent no. 1 further argues that neither the petitioner no. 2 nor the enquiry committee tried to uncover the candidate behind anonymous complaint thereby, violating statutory regulation of Government of Haryana in dealing with anonymous complaints. Moreover, none from the candidates appearing as well as invigilators on duty deposed in the investigation regarding the incident of cheating during the exam or any internal or external interference during the entrance test prior to the anonymous complaint.

5. Having heard the learned counsel for the parties, this Court finds force in the arguments put forth by learned counsel for petitioners. The second exception to section 499 of IPC provides for the conduct of public servants, which is reproduced as:

As per Second Exception "It is not defamation to express in the good faith any opinion whatever respecting a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further".

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Reliance in this regard can be placed on Judgment of Two Judge Bench of Hon'ble Supreme Court in ***Arundhati Roy, In re, 2002(2) RCR (Criminal) 70***, referring to Second Exception, speaking through Justice R.P. Sethi, observed that:

23. even a person claiming the benefit of Second Exception to Section 499 of the Indian Penal Code, is required to show that the opinion expressed by him was in good faith which related to the conduct of a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct

Pertinently, the learned Court below has issued summons under sections 500 and 120-B of IPC to the petitioners without supplying cogent reasons. Moreover, the petitioners acted in exercise of their official duty as opposed to their personal capacity. The responsibility attached was with regard to conduct the exam in a fair and impartial manner. Also, the comments furnished by the faculty members were their opinion on the process of conducting examination while discharging their duties in good faith without malicious intent.

6. A two Judge bench of the Hon'ble Supreme Court in ***M/S. JM Laboratories and others vs. State of Andhra Pradesh and another 2025 SCC OnLine SC 208***, speaking through Justice B.R. Gavai, held as follows:

"8. In the judgment and order of even date in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled "INOX Air Products Limited Now Known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh", we have observed thus:

"33. It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons

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are recorded for issuing the process against the accused persons.

34. In this respect, it will be relevant to refer to the following observations of this Court in the case of **Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others (1998) 5 SCC 749 (supra)**:

"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."

35. This Court has clearly held that summoning of an accused in a criminal case is a serious matter. It has been held that 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. **This Court held that the Magistrate is required to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. It has been held that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning the accused.**

36. The said law would be consistently following by this Court in a catena of judgments including in the cases of **Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 SCC 609, Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others (2015) 12 SCC**



420 and Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another (2021) 5 SCC 435.

37. Recently, a Bench of this Court to which one of us (Gavai, J.) was a Member, in the case of ***Lalankumar Singh and Others v. State of Maharashtra 2022 SCC Online SC 1383 (supra)***, has observed thus:

"38. 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***, 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.

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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."

39. A similar view has been taken by this Court in the case of **Ashoke Mal Bafna** (*supra*).

40. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed."

9. In the present case also, no reasons even for the namesake have been assigned by the learned Magistrate. The summoning order is totally a non-speaking one. We therefore find that in light of the view taken by us in criminal appeal arising out of **SLP (Crl.) No. 2345 of 2024 titled "INOX Air Products Limited Now Known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh"**, and the legal position as has been laid down by this Court in a catena of judgments including in the cases of **Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others**, (1998) 5 SCC 749 : 1997 INSC 714 **Sunil Bharti Mittal v. Central Bureau of Investigation**, (2015) 4 SCC 609 : 2015 INSC 18 **Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others**, (2015) 12 SCC 420 : 2015 INSC 983 and **Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another**, (2021) 5 SCC 435 : 2021 INSC 160 the present appeal deserves to be allowed.

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7. From the perusal of the order it transpires that the learned Magistrate summoned the petitioners without furnishing any cogent reasons. Further, the learned Magistrate failed to mention the sufficient grounds for proceeding in summoning the petitioners, thus, it is a non speaking order and as per the settled law non speaking order is unsustainable in law.

8. In view of the discussion above, the impugned order dated 25.09.2018 (Annexure P-11) is set aside and matter is remanded back to the learned Judicial Magistrate First Class, Gohana, to consider it afresh and pass appropriate order, strictly in accordance with law.

9. Disposed of, accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

17.03.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No