



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

CRM-M-12022-2025
Date of decision: 04.03.2025

BALKAR SINGH AND OTHERS

...PETITIONERS

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Kaushik, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. Prayer in the present petition filed under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') is for quashing of complaint bearing No.COMI-01-2023 titled as '*Ramphal vs. Balkar Saini etc.*' registered under Sections 323/341/406/506/34 IPC and 3(i)(2)(va) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter 'SC/ST Act') and order dated 09.01.2025 (Annexure P-2) passed by learned Additional Sessions Judge, Jind, whereby, notice was issued to petitioners-accused.

2. Briefly, the alleged facts of the present case are that respondent No.2-complainant is a property dealer and belongs to a Scheduled Caste. Respondent No.2 and petitioners No.1 to 3 got a sale executed with respect to agricultural land, upon which he demanded commission from petitioners No.1 and 3. However, they flatly refused and started abusing him. On 20.11.2022, a complaint was moved in this regard before the SHO, PS Sadar. Thereafter, on 11.12.2022, at about 11:00 AM, the petitioners stopped respondent No.2 near



Safidon Gate, Jind and started abusing the complainant with castiest remarks. They also pushed him on the road and threatened to kill him. One Mohit arrived at the spot and rescued respondent No.2 from the petitioners. A complaint in this regard was moved before SP, Jind on 12.12.2022. Another complaint was moved by respondent No.2 before the National Commission for Scheduled Castes (NCSC), New Delhi. The police enquired into the matter and gave a report dated 02.02.2023 but no action was taken against the petitioners, causing respondent No.2 to file the complaint (*supra*).

3. Learned counsel for the petitioners *inter alia* contends that the impugned order dated 09.01.2025 (Annexure P-2) 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 or even hearing the complainant and reliance in this regard is placed upon ***M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate (1998) 5 SCC 749.***

4. Having heard learned counsel for the petitioners, this Court finds force in the arguments put forth by him. The learned Court below has issued notice to the petitioners by merely issuing a four-line order, which is reproduced hereunder:

“Arguments not advanced. An adjournment is requested. Heard. Request allowed.

Now, the case is adjourned to 04.03.2025 for arguments.

Notice to accused be also issued for the date fixed.”

5. 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 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.

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.

6. In view of the discussion above, the impugned order dated 09.01.2025 (Annexure P-2) is hereby set aside and the matter is remanded back to learned Additional Sessions Judge, Jind, to consider it afresh and pass an appropriate order, strictly in accordance with law.

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

March 04, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No