

MEHMOOD UL REHMAN

A

v.

KHAZIR MOHAMMAD TUNDA AND ORS.

(Criminal Appeal No. 1347 of 2010 etc.)

March 31, 2015

B

[KURIAN JOSEPH AND ADARSH KUMAR GOEL, JJ.]

Code of Criminal Procedure, 1973 – ss.190(1)(a), 204 and 482 – Issue of process after taking cognizance of offence u/s. 190(1)(a) – Application u/s. 482 for quashing the proceedings – Rejected by High Court – In appeal, held: The Magistrate can proceed u/s. 204 by issuing process, only when he is satisfied that allegations in the complaint constitute an offence and when considered alongwith the statements recorded, would prima facie make the accused answerable before the court – Application of mind by the Magistrate is best demonstrated by disclosure of mind on the satisfaction – If there is no such indication, for proceeding u/ss.190/204, the High Court is bound to invoke its inherent power in order to prevent abuse of power of the Criminal Court – In the present case, there is no indication on the application of mind by the Magistrate in taking cognizance and issuing process for the offence u/s. 500 of Ranbir Penal Code – Matter remitted to the Magistrate for consideration afresh – Ranbir Penal Code, 1932 – s.500.

Allowing the appeals and remitting the matter to judicial Magistrate, the Court.

HELD: 1. Cognizance of an offence on complaint is taken for the purpose of issuing process to the

- A accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint when considered along with the statements recorded or the inquiry conducted thereon,
- B would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. [Para 21] [856-F-H]
- C *Pepsi Foods limited and Anr. v. Special Judicial Magistrate and Ors.* (1998) 5 SCC 749: 1997 (5) Suppl. SCR 12; *Darshan Singh Ram Kishan v. State of Maharashtra* (1971) 2 SCC 654: 1972 (1) SCR 571; *Emperor v. Sourindra Mohan Chuckerbutty* (1910) I.L.R.
- D Vol. XXXVII, Cal. 412; *Smt. Nagawwa v. Verranna Shivalingappa Kanjali and Ors.* (1976) 3 SCC 736: 1976 (0) Suppl. SCR 123; *Kishun Singh and Ors. v. State of Bihar* (1993) 2 SCC 16:1993 (1) SCR 31; *State of W.B. and Anr. v. Mohd. Khalid and Ors.* (1995) 1 SCC 684:1994
- E (6) Suppl. SCR 16; *Kanti Bhadra Shah and Anr. v. State of W.B.* (2000) 1 SCC 722: 2000 (1) SCR 27; *U.P. Pollution Control Board v. Mohan Meakins Limited and Ors.* (2000) 3 SCC 745: 2000 (2) SCR 566; *Deputy Chief*
- F *Controller of Imports and Exports v. Roshanlal Agarwal and Ors.* (2003) 4 SCC 139: 2003 (2) SCR 621; *Jagdish Ram v. state of Rajasthan and Anr.* 2004 (4) SCC 432: 2004 (2) SCR 846; *S.K. Sinha, Chief Enforcement Officer v. Videocon International Limited and Ors.* (2008) 2 SCC
- G 492: 2008 (2) SCR 36; *U..P. Polution control Board v. Dr. Bhupndra Kumar Modi and Anr.* (2009) 2 SCC 147: 2008 (17) SCR 349; *Bhushan Kumar and Anr. v. State (NCT of Delhi) and Anr.* (2012) 5 SCC 424: 2012 (2) SCR 696– relied on.
- H

2. The steps taken by the Magistrate u/s.190(1)(a) A
CrPC followed by s.204 of CrPC should reflect that the
Magistrate has applied his mind to the facts and the
statements and he is satisfied that there is ground for
proceeding further in the matter by asking the person B
against whom the violation of law is alleged, to appear
before the court. The Magistrate is not to act as a post
office in taking cognizance of each and every complaint
filed before him and issue process as a matter of
course. There must be sufficient indication in the order C
passed by the Magistrate that he is satisfied that the
allegations in the complaint constitute an offence and
when considered along with the statements recorded
and the result of inquiry or report of investigation u/
s.202 of CrPC, if any, the accused is answerable before D
the criminal court, there is ground for proceeding
against the accused u/s. 204 of CrPC, by issuing
process for appearance. Application of mind is best
demonstrated by disclosure of mind on the
satisfaction. If there is no such indication in a case E
where the Magistrate proceeds u/ss.190/204 of CrPC,
the High Court u/s.482 of CrPC is bound to invoke its
inherent power in order to prevent abuse of the power
of the criminal court. To be called to appear before F
criminal court as an accused is a serious matter
affecting one's dignity, self respect and image in
society. Hence, the process of criminal court shall not
be made a weapon of harassment. [Para 23] [857-D-E,
G-H; 858-A-D]

3. In the present case, there is no indication on G
the application of mind by the Magistrate in taking
cognizance and issuing process to the appellants. The
application of mind cannot be inferred. Though no
formal or speaking or reasoned orders are required at H

A the stage of s.190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded u/s.200 of CrPC so as to proceed against the offender. No doubt, the High Court
B is right in holding that the veracity of the allegations, is a question of evidence. Question is not about veracity of the allegations; but whether the respondents are answerable at all before the criminal court. There
C is no indication in that regard in the order passed by the Magistrate. Hence, the orders passed by the Judicial Magistrate and the High Court are set aside. The matter is remitted to the Magistrate for fresh consideration and further action, if required to be taken
D in accordance with law. [Para 24] [858-E-H; 859-A-B]

Case Law Reference

	1997 (5) Suppl. SCR 12	relied on	Para 8
E	1972 (1) SCR 571	relied on	Para 9
	(1910) I.L.R. Vol. XXXVII, Cal.412	relied on	Para 10
	1976 (0) Suppl. SCR 123	relied on	Para 11
F	1993 (1) SCR 31	relied on	Para 12
	1994 (6) Suppl. SCR 16	relied on	Para 13
	2000 (1) SCR 27	relied on	Para 14
G	2000 (2) SCR 566	relied on	Para 15
	2003 (2) SCR 621	relied on	Para 16
	2004 (2) SCR 846	relied on	Para 17

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2008 (2) SCR 36 **relied on** **Para 18 A**

2008 (17) SCR 349 **relied on** **Para 19**

2012 (2) SCR 696 **relied on Para 20**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1347 of 2010.

From the Judgment and Order dated 18.05.2007 of the High Court of Jammu and Kashmir at Srinagar in Petition No. 23 of 2007. :

WITH

Crl. A. No. 1348/2010.

Soli J. Sorabjee, Vibha Datta Makhija, Sarad Kumar Singhania, Amit Kumar Singh, Rashmi Singhania, Praveen Chaturvedi, Anisul Haque, S. Janani, Deepak Goel, Sunando Raha for the appearing parties.

The Judgment of the Court was delivered by E

KURIAN, J. 1. Cognizance of an offence is taken by the Magistrate under Chapter XIV Section 190 of The Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'). The Chapter deals with "Conditions Requisite For Initiation of Proceedings". The Magistrate is empowered to take cognizance of an offence under Section 190(1)(a) of CrPC upon receiving a complaint of facts which constitute such offence. Chapter XV CrPC deals with the further procedure for dealing with "Complaints to Magistrate". Under Section 200 of CrPC, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the

- A complainant, the witnesses and the Magistrate. Under Section 202 of CrPC, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person “for the purpose of deciding whether or not there is sufficient ground for proceeding”. If, after considering the statements recorded under Section 200 of CrPC and the result of the inquiry or investigation under Section 202 of CrPC, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so. Chapter XVI CrPC deals with “Commencement of Proceedings before Magistrate”. If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) of CrPC for attendance of the accused.

2. In the instant case, we are called upon to decide the scope of the ‘opinion of Magistrate’ on sufficient ground for proceeding to issue process to the accused. The question has arisen in the background of an order passed by the Judicial Magistrate First Class, Srinagar on 03.04.2007 on a complaint filed by the first respondent herein under Section 500 of Ranbir Penal Code, 1932 [Section 500 the Indian Penal Code (45 of 1860)]. The operative portion of the order reads as follows:

- “Perused the complaint, and the statements recorded. In the first instance of proceedings, let bail warrant to the tune of Rs.15,000/- be issued against the alleged accused persons, with direction to accused persons to cause their appearance before this court on 22.4.07, to answer the material questions.”

3. According to the appellants, the complaint filed by the first respondent did not constitute an offence and hence

they were not liable to be called by the Magistrate to defend A
the criminal proceedings. Thus, aggrieved, the appellants
filed a petition to quash the proceedings initiated by the
Magistrate by order dated 03.04.2007.

4. The High Court, by the impugned order, rejected the B
petition holding that the veracity of allegations made in the
complaint filed by the first respondent before the Magistrate
“is a question of evidence and can be settled only when
the evidence is adduced”.

5. Heard Shri Soli J. Sorabjee, learned Senior Counsel C
appearing for the appellants in Criminal Appeal No. 1347
of 2010 and appearing for the respondents in Criminal
Appeal No. 1348 of 2010. Ms. Vibha Datta Makhija, learned
Senior Counsel appeared for the respondents in Criminal D
Appeal No. 1347 of 2010 and for the appellants in Criminal
Appeal No. 1348 of 2010. Ms. S. Janani, learned Counsel
appeared for the complainant/respondent(s) in both
Criminal Appeal Nos. 1347 of 2010 and 1348 of 2010.

6. Though the learned Senior Counsel made an E
attempt to canvas on the merits of the matter as well, we
do not find it necessary and it is not proper also at this
stage to deal with the same. However, the contention that
the Magistrate has not even formed an opinion as to F
whether the allegations in the complaint would constitute
an offence, when considered along with the statements
recorded under Section 200 of CrPC, requires
consideration.

7. The question is: how does a Magistrate, while taking G
cognizance of an offence on complaint, indicate his
satisfaction regarding the ground for proceeding against the
accused.

- A **8. In Pepsi Foods Limited and another v. Special**
 Judicial Magistrate and others¹, this Court has held that
 exercise under Section 204 of CrPC of summoning an
 accused in a criminal case is a serious matter and that the
 process of criminal law cannot be set into motion in a
B mechanical manner. It was also 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
 governing the issue. To quote:
- C “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
D 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
E 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
F 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
G allegations or otherwise and then examine if any
 offence is prima facie committed by all or any of the
 accused.”

H 1 (1998) 5 SCC 749

9. In taking recourse to such a serious process, this Court has consistently held that the Magistrate must apply his mind on the allegations on commission of the offence. In Darshan Singh Ram Kishan v. State of Maharashtra², it was held that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and thereafter takes judicial notice of the offence. To quote:

“8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report.”

10. In one of the early decisions, Emperor v. Sourindra Mohan Chuckerbutty³, a Division Bench of the

² (1971) 2 SCC 654

³ (1910) I.L.R. Vol.XXXVII, Cal. 412

A Calcutta High Court has taken the same view ... "taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence".

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11. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others⁴, this Court took the view that in the process of taking cognizance and issue of process to the accused, Magistrate has to form an opinion that a *prima facie* case is made out against the accused. At that stage, the Magistrate is also competent to consider whether there are inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant. To quote:

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"5. ... It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a *prima facie* case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. ..."

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12. In Kishun Singh and Others v. State of Bihar⁵, A
this Court reiterated the position that where, on application
of mind, the allegations in the complaint, according to the
Magistrate, if proved, would constitute an offence,
cognizance is to be taken of the offence so as to proceed
further against the accused. To quote: B

“7. ... Even though the expression ‘take cognizance’
is not defined, it is well settled by a catena of
decisions of this Court that when the Magistrate takes
notice of the accusations and applies his mind to the C
allegations made in the complaint or police report or
information and on being satisfied that the allegations,
if proved, would constitute an offence decides to
initiate judicial proceedings against the alleged
offender he is said to have taken cognizance of the D
offence. It is essential to bear in mind the fact that
cognizance is in regard to the offence and not the
offender. Mere application of mind does not amount
to taking cognizance unless the Magistrate does so
for proceeding under Sections 200/204 of the Code E
...”

**13. In State of W.B. and another v. Mohd. Khalid and
others**⁶, it has been held by this Court that while exercising
the power to take cognizance, a Magistrate has to see F
whether there is any basis for initiating judicial proceedings.
At paragraph-43, it has been held as follows:

“43. ... Section 190 of the Code talks of cognizance
of offences by Magistrates. This expression has not G
been defined in the Code. In its broad and literal

5 (1993) 2 SCC 16

6 (1995) 1 SCC 684

- A sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."
- B
- C

14. In Kanti Bhadra Shah and another v. State of W.B.⁷, this Court has taken the view that it is quite unnecessary to write detailed orders at the stage of issuing process.
- D

15. In U.P. Pollution Control Board v. Mohan Meakins Limited and others⁸, the position was further clarified that it was not necessary to pass a speaking order at the stage of taking cognizance.
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16. In Deputy Chief Controller of Imports and Exports v. Roshanlal Agarwal and others⁹, this Court considered the situation where the impugned order passed by the Magistrate read as follows: "Cognizance taken. Register the case. Issue summons to the accused". It was held that "at the stage of issuing the process to the accused, Magistrate is not required to record reasons".
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- G Kanti Bhadra Shah (supra) and U.P. Pollution Control

7 (2000) 1 SCC 722

8 (2000) 3 SCC 745

H 9 (2003) 4 SCC 139

Board (supra) were also referred to in the said decision. A

17. In **Jagdish Ram v. State of Rajasthan and another**¹⁰, the law was restated holding that at the stage of issuing process to the accused, the Magistrate is not required to record reasons. However, he has to be satisfied that there is sufficient ground for proceeding and such satisfaction is not whether there is sufficient ground for conviction. To quote: B

“10. ... The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.” C D

18. In **S.K. Sinha, Chief Enforcement Officer v. Videocon International Limited and others**¹¹, this Court held that taking cognizance has no esoteric or mystic significance in criminal law and it connotes that a judicial notice is taken of an offence, after application of mind. To quote: E F

“19. The expression “cognizance” has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means “become aware of” and when used with reference to a court G

10 (2004) 4 SCC 432

11 (2008) 2 SCC 492

A or a Judge, it connotes “to take notice of judicially”. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

B 20. “Taking cognizance” does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.”

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E 19. In U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi and another¹², at paragraph-23, the position has been discussed as follows:

F “23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.”

G 20. In Bhushan Kumar and another v. State (NCT of Delhi) and another¹³, the requirement of application of mind in the process of taking cognizance was reiterated.

¹² (2009) 2 SCC 147

H ¹³ (2012) 5 SCC 424

It was further held that summons is issued to notify an individual of his legal obligation to appear before the Magistrate as a response to the alleged violation of law. It was further held that in the process thus issued, the Magistrate need not explicitly state the reasons. Paragraphs-11 to 13 contain the relevant discussion, which read as follows:

“11. In *Chief Enforcement Officer v. Videocon International Ltd.*³ (SCC p. 499, para 19) the expression “cognizance” was explained by this Court as “it merely means ‘become aware of’ and when used with reference to a court or a Judge, it connotes ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.” It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A “summons” is a process issued by a court calling upon a person to appear before a Magistrate. It is

- A used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started
- B against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a
- C ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of
- D a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is
- E nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."

- F 21. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of
- G mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court.
- H It is not a mechanical process or matter of course. As held

by this Court in **Pepsi Foods Limited** (supra), to set in A
motion the process of criminal law against a person is a
serious matter.

22. Under Section 190(1)(b) of CrPC, the Magistrate
has the advantage of a police report and under Section B
190(1)(c) of CrPC, he has the information or knowledge of
commission of an offence. But under Section 190(1)(a) of
CrPC, he has only a complaint before him. The Code
hence specifies that ... "a complaint of facts which C
constitute such offence". Therefore, if the complaint, on the
face of it, does not disclose the commission of any offence,
the Magistrate shall not take cognizance under Section
190(1)(a) of CrPC. The complaint is simply to be rejected.

23. The steps taken by the Magistrate under Section D
190(1)(a) of CrPC followed by Section 204 of CrPC should
reflect that the Magistrate has applied his mind to the facts
and the statements and he is satisfied that there is ground
for proceeding further in the matter by asking the person E
against whom the violation of law is alleged, to appear
before the court. The satisfaction on the ground for
proceeding would mean that the facts alleged in the
complaint would constitute an offence, and when F
considered along with the statements recorded, would,
prima facie, make the accused answerable before the court.
No doubt, no formal order or a speaking order is required
to be passed at that stage. The Code of Criminal Procedure
requires speaking order to be passed under Section 203
of CrPC when the complaint is dismissed and that too the G
reasons need to be stated only briefly. In other words, the
Magistrate is not to act as a post office in taking cognizance
of each and every complaint filed before him and issue
process as a matter of course. There must be sufficient
indication in the order passed by the Magistrate that he is H

- A satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for
- B proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where
- C the Magistrate proceeds under Sections 190/204 of CrPC, the High Court under Section 482 of CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before
- D criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.

24. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on
- E the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without
- F application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Section 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts
- G constituting commission of an offence and the statements recorded under Section 200 of CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. Question is not about veracity of the allegations;
- H but whether the respondents are answerable at all before

the criminal court. There is no indication in that regard in A
the order passed by the learned Magistrate. We, hence,
set aside the order dated 03.04.2007 passed by the Judicial
Magistrate First Class, Srinagar and the impugned order
passed by the High Court. The matter is remitted to the
Magistrate for fresh consideration and further action, if B
required to be taken in accordance with law.

25. The appeals are allowed as above.

Kalpana K. Tripathy

Appeals allowed. C