

Before M. M. Punchhi, J.

STATE THROUGH PROVIDENT FUND INSPECTOR,
PANIPAT,—Petitioner

versus

SHRI NARAIN SINGH AND ANOTHER,—Respondents.

Criminal Revision No. 346 of 1982.

November 15, 1983

Code of Criminal Procedure (II of 1974)—Sections 204 and 251—Accused summoned by the Magistrate without application of mind when passing of an order as envisaged under section 204—Accused appeared and particulars of the alleged offence not stated to him—Magistrate discharging the accused holding that there was no prima facie evidence against him—Such procedure—Whether permissible in law.

Held, that while passing orders under section 204 of the Code of Criminal Procedure, 1973, the Magistrate did not apply his mind, for if he had done so he would not have faced the difficulty at that stage to put the accusation to the accused under section 251 of the Code. It was thus, practically retracing of steps, having once taken them forward; a situation impermissible. The order of the Magistrate was plainly in the nature of refusal to exercise jurisdiction and has to be set aside but not in isolation. Along therewith the summoning orders too should be set aside, for the Magistrate did not apply his mind.

(Para 3).

Petition under Section 397/401 Cr. P. C. for the revision of the order of the Court of Shri K. K. Doda, Chief Judicial Magistrate, Karnal, dated 15th June, 1981 discharging the accused.

C. D. Dewan, Sr. Advocate, with S. K. Sharma, Advocate, for the Petitioner.

D. S. Bali, Advocate, with R. A. Yadav, Advocate, for the Respondent.

JUDGMENT

Madan Mohan Punchhi, J. (Oral).

(1) This judgment shall dispose of Criminal Revisions Nos. 346, 347, 348 and 349 of 1982. These are against four respective orders

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of the Chief Judicial Magistrate, Karnal, whereby he, after summoning the accused in these cases, did not put to them the accusations as required under section 251 of the Code of Criminal Procedure. The complainant in each case being the Provident Fund Inspector, has approached this Court questioning the orders of discharge of the accused, which were passed resultantly for the view taken by the learned Magistrate.

(2) It is clear from the respective files that, on receipt of each of the complaints, the learned Magistrate, without passing an order as conceived of under section 204 of the Code of Criminal Procedure, just ordered that the accused be summoned. Thereupon, the accused, on being summoned, put in appearance before him. At that juncture, the complainant insisted that the substance of the accusation be stated to the accused as mandatorily required under section 251 of the Code of Criminal Procedure, for the complainant legitimately could entertain the hope that the accused would plead guilty. Now, here the learned Magistrate, instead of following that course, opined that there was no *prima facie* evidence against the accused as also there was no evidence to establish that the accused had any connection with the offending firm or even that such a firm was in existence. The learned Magistrate also opined that it was incumbent on the complainant to have produced some documentary evidence before the Court to *prima facie* establish that there existed the offending firm and that the accused in person before him was a partner thereof. Perhaps even that was not enough as is plain from the bare reading of section 14-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, in which criminality is foisted on firms. Be that as it may, the learned Magistrate did not choose to proceed further and there is suggestedly a jurisdictional error in such refusal to proceed.

(3) As pointed out before, the learned Magistrate, while passing orders under section 204 of the Code of Criminal Procedure, did not apply his mind, for if he had done so he would not have faced the difficulty at that stage to put the accusation to the accused under section 251 of the Code of Criminal Procedure. It was thus, practically retracing of steps, having once taken them forward; a situation impermissible. The impugned orders of the learned Magistrate are plainly in the nature of refusal to exercise jurisdiction. These have thus to be set aside and are accordingly so set aside but not in isolation. Along therewith the summoning orders

too are set aside, for the Magistrate, as said before, did not apply his mind. As at present advised, I do not propose to dismiss the complaints as such, though something could be said in that regard on the plain and conjoint reading of sections 14 and 14-A of the aforesaid Act.

(4) Thus, these revision petitions are accepted, the impugned orders are set aside as also the summoning orders, and the complaints are remitted back to the learned Magistrate to proceed thereon in accordance with law. The learned Magistrate need be advised that, though it is true that when a complaint is filed by a public servant, acting or purporting to act in the discharge of his official duties, the Magistrate in that event need not summon the complainant and his witnesses; yet that does not *ipso facto* mean that the averments in the complaint justify issue of process under section 204, Code of Criminal Procedure. The Magistrate taking cognizance of the offence, has to express his opinion that there is sufficient ground for proceeding and it is only then that process can be issued to the accused. It is on these reasons that the complaints as such are being remitted back to the learned Magistrate for his consideration.

(5) The complainant, who is common in all the four cases, is directed, through his counsel, to put in appearance before the learned Chief Judicial Magistrate, Karnal, on 13th December, 1983.

N.K.S.