[2025] 1 S.C.R. 1256 : 2025 INSC 127

M/s JM Laboratories and Others
v.
State of Andhra Pradesh and Another

(Criminal Appeal No. 487 of 2025)

30 January 2025

[B.R. Gavai* and Augustine George Masih, JJ.]

Issue for Consideration

Non-speaking summoning order issued by Magistrate against the appellants. Petition under Section 482, CrPC filed by the appellants for quashing, dismissed by High Court. Issue as regards the legality of the summoning order and the impugned judgment.

Headnotes†

Summoning order – Non-speaking – Quashing of:

Held: Summoning of an accused in a criminal case is a serious matter – 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 – However, in the present case, the summoning order was totally a non-speaking one – Magistrate issued the process without assigning any reasons even for the namesake – Impugned judgment passed by the High Court is quashed and set aside – Summoning order and the proceedings arising therefrom also quashed and set aside. [Paras 6, 8, 9, 10]

Case Law Cited

INOX Air Products Limited Now Known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh, **SLP (Crl.) No. 2345 of 2024;** *Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others,* **1997 INSC 714 : [1997] Supp. 5 SCR 12 : (1998) 5 SCC 749;** *Sunil Bharti Mittal v. Central Bureau of Investigation,* **2015 INSC 18 : [2015] 1 SCR 377 : (2015) 4 SCC 609;** *Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others,* **2015 INSC 983 : [2015] 4 SCR 841 : (2015) 12 SCC 420;** *Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another,* **2021 INSC 160 : [2021] 2 SCR 550 : (2021) 5 SCC 435 – relied on.**

* Author

M/s JM Laboratories and Others v.
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List of Acts

Code of Criminal Procedure, 1973; Drugs and Cosmetics Act, 1940.

List of Keywords

Summoning order; Non-speaking; Issuance of process; Without assigning any reasons; Magistrate; Criminal proceedings; Quashing; Application of mind.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 487 of 2025

From the Judgment and Order dated 04.10.2023 of the High Court of Andhra Pradesh at Amravati in CRLP No. 5766 of 2023

Appearances for Parties

Advs. for the Appellants:
H.P.S. Sandhu, Harshit Sethi, Kartik Yadav, Ms. Mansi Tripathi, Ayush Choudhary.

Advs. for the Respondents:
Ms. Prerna Singh, Guntur Pramod Kumar, Gautam Bhatia, Dhruv Yadav.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. Leave granted.

2. The present appeal challenges the judgment and final order dated 4th October, 2023 passed by a learned Single Judge of the High Court of Andhra Pradesh at Amravati in Criminal Petition No. 5766 of 2023, whereby the petition filed by the appellants herein under Section 482 of Code of Criminal Procedure, 1973 (hereinafter, "CrPC") *to quash* the proceedings in C.C. No. 1051 of 2023 on the file of learned Judicial Magistrate of First Class, Kurnool (hereinafter, "trial court") *came to be dismissed.*

3. The facts, *in brief,* giving rise to the present appeal are as given below.

   3.1. On 29th May, 2019 the Drugs Inspector, Kurnool Urban, Kurnool District (Respondent No. 2) filed a complaint being C.C. No. 1051 of 2023 in the Court of First Class Judicial Magistrate, Kurnool under Section 32 of the Drugs and Cosmetics Act, 1940 (hereinafter, "DC Act") against M/s. J.M. Laboratories (Appellant No. 1), its Managing Partner (Appellant No. 2) and three silent partners (Appellant Nos. 3, 4 & 5).

   3.2. It is alleged that on 7th September, 2018, the complainant picked up sample of drug MOXIGOLD-CV 625 (Amoxycillin & Potassium Clavunate Tablets IP) bearing Batch No. BT170059F / Manufacture Date – November 2017 / Expiration Date – April 2019, which was manufactured by Appellant No. 1, for analysis. It is further alleged that on the same day by a memorandum, the complainant sent one sealed portion of the drug sample to the Government Analyst, Drugs Control Laboratory, Vijayawada along with Form-18 through registered post. It is further alleged that subsequently on 15th December, 2018, the complainant received Analytical Report in Form-13 from the Government Analyst declaring the drug sample as *"Not of Standard Quality"* as defined in the DC Act and rules thereunder for the reason that the sample failed in Dissolution Test for Amoxycillin and Clavulanic Acid. It is, therefore, alleged that the appellants herein have violated Section 18(a)(i) *read with* Section 16 of the DC Act by manufacturing, selling and distributing "Not of Standard Quality" drugs and ought to be punished for offence punishable under Section 27(d) of DC Act.

   3.3. Pursuant to the complaint, the trial court by an order dated 19th July, 2023 summoned the appellants herein and directed them to appear before it on 10th August, 2023.

   3.4. Aggrieved thereby, the appellants herein filed a petition under Section 482 of CrPC *inter-alia* praying that the High Court *quash* criminal proceedings against them arising out of C.C. No. 1051 of 2023 on the file of the trial court.

   3.5. Vide impugned judgment and final order, the learned Single Judge of the High Court *dismissed* the Criminal Petition. Aggrieved thereby, the present appeal by way of special leave.

4. We have heard Shri H.P.S. Sandhu, learned counsel appearing on behalf of the appellants and Smt. Prerna Singh, learned counsel appearing on behalf of the respondents.

5. Several submissions have been made on behalf of the appellants. It is contended by the appellants that there are violations of various statutory provisions. It is also contended that the case is barred by limitation in view of the provisions contained in Section 468 (2) of the Cr.P.C. It is submitted that the Analytical Report in respect of which the violation is alleged is dated 15th December 2018 whereas the complaint is filed in May 2023. It is submitted that it is filed beyond a period of three years and hence, the same would not be tenable. It is also submitted that there is also non-compliance of the provisions of Section 202 of Cr.P.C.

6. However, we do not find it necessary to consider the submissions made by the appellants on various grounds inasmuch as the present appeal is liable to be allowed on the short ground that the learned Magistrate has issued the process without assigning any reasons.

7. It will be relevant to refer to the summoning order which reads thus:

> "Whereas your attendance is necessary to give evidence in a charge Sec.18(a)(i) r/w Sec. 16(i)(a) of Drugs & Cosmetics Act, 1940 against the accused M/s J.M. Laboratories, Vill. Bhanat, P.O-Ghtti, Subathu Road, Solan (H.P.). You are hereby requested to appear in person before the Hon'ble Court of Judicial First Class Magistrate, Kurnool at 10:30 AM on the 10th day of August 2023.
>
> Given under my hand the seal of the court this _____ day of July 2023."

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*[9], which reads thus:
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> > "**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).
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> **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***[1], ***Sunil Bharti Mittal v. Central Bureau of Investigation***[2]***, Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others***[3] and ***Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another***[4]***,*** the present appeal deserves to be allowed.

10. In the result, we pass the following order:

    (i) The present appeal is allowed;

    (ii) The impugned judgment and order dated 4th October 2023 passed by the High Court of Andhra Pradesh at Amravati in Criminal Petition No. 5766 of 2023 is quashed and set aside; and

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1 1997 INSC 714 : (1998) 5 SCC 749

2 2015 INSC 18 : (2015) 4 SCC 609

3 2015 INSC 983 : (2015) 12 SCC 420

4 2021 INSC 160 : (2021) 5 SCC 435

(iii) The summoning order dated 19th July 2023 passed by the Trial Court in C.C. No. 1051 of 2023 and the proceedings arising therefrom are also quashed and set aside.

11. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey