

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 03.02.2025

Pronounced on: 20.02.2025

CRMC No. 357/2018

IA No. 1/2018

Rajesh Tandon

.....Appellant(s)/Petitioner(s)

Through: Mr. Ashish Sharma, Advocate.

vs

Mohd. Safeer

..... Respondent(s)

Through: Mr. Z. A. Qazi, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner is a reporter of daily newspaper 'Early Times' for District Poonch. It is stated by the petitioner that the work of the petitioner is only to provide information to the head office of 'Early Times' situated at Gujjar Nagar, Jammu and there is one more reporter of daily newspaper 'Early times' for District Poonch, who has been assigned the same duty of reporting the news to the head office of Early Times. On 25.04.2018, a news was published in the daily newspaper 'Early Times' that ambulance of Surankote Hospital has been turned into load carrier and most of the times, when there is any emergency, officials of hospital say that the ambulance is unavailable but the government vehicles can be commonly seen serving the officials of the department and the people are forced to look for alternatives. The issue was raised before the CMO, Poonch and he assured that he will take appropriate action.

2. After publishing of the above-mentioned news item in the Early Times newspaper on 25.04.2018, the respondent filed a complaint under Section 500 RPC, alleging therein that the petitioner in order to defame the respondent published such a news along with photographs and moreover a video of the same was uploaded on social media, that went viral among public at large. It is further stated that the news item was published to defame the respondent in public and he was put to task by the officer of the department. He was forced to remain within the four walls, and it was very hard for him to come out under such circumstances, as there was imminent threat to the life and liberty of the respondent. It was also claimed by the respondent that he was suspended by the authority and an enquiry was initiated against him in respect of the said fake news but later he was found innocent, as the photographs and video of ambulance did not match with the ambulance of the hospital.
3. The petitioner has filed the present petition for quashing the proceedings initiated in the complaint titled "*Mohd. Safeer vs. Rajesh Tandon*" under Section 500 RPC pending before the JMJC, Surankote on the following grounds:
- i. That there was no imputation in the news item regarding respondent.
 - ii. That the government hospital owns four ambulances and for each ambulance, there is separate driver and the news item was not attributed to any particular person. It is further stated that the petitioner is not the only reporter of the daily newspaper 'Early Times' for district Poonch and it is not necessary that every

news of District Poonch is published at the instance of the petitioner and further that if anybody has to avail the service of the ambulance, he has to approach the officers of the hospital and not the driver and after getting the permission, he has to deposit the charges for the service of the ambulance. The driver has no role to give permission to anybody to avail the services of the ambulance.

- iii. That there are no specific allegations whatsoever against the petitioner that the petitioner was responsible for selection of the news item and no content of the news item says that the respondent was misusing the government vehicle for personal use. The news item was published at the instance of the local people of Surankote, who were being denied the services of the ambulance meant for public use.
- iv. That the complaint did not contain any imputation concerning some particular person or persons, whose identity could be established and if they contain no reflection upon a particular individual or individuals but equally applied to other although belonging to the same class, and action for defamation will not lie.

- 4. The respondent has filed the response, stating therein that he is the driver of the only ambulance available at SDH Surankote and to defame the respondent, the petitioner got the news published in Early Times newspaper with the caption “SDH Surankote Ambulance turns Load Carrier” with a photo of the ambulance van and also circulated video on

social media. This was done with *mala fide* intention, without adhering to the basic ethics and norms of the journalism. It is further stated that the respondent was suspended by the department and enquiry was initiated by the department and during the enquiry it was found that the ambulance van shown in the newspaper and video is not of Health Department or SDH Surankote but is of JNV Surankote and fake news was published by the petitioner only to defame the answering respondent in the eyes of public.

5. Mr. Ashish Sharma, learned counsel for the petitioner has submitted that the petitioner could not have been prosecuted particularly when neither the news item was published by the petitioner, nor any reference to the petitioner or respondent was made in the news item. He has further submitted that merely because the respondent was put under suspension and enquiry was ordered against him, would not lead to the conclusion that the petitioner had got the news item published in the Early Times Newspaper and that pertained to the respondent. He has further argued that nowhere in the news item published in the Early Times Newspaper, name of the petitioner has been mentioned, as such, continuance of such mis-conceived proceedings amounts to abuse of process of law.
6. Per contra, Mr. Z. A. Qazi, learned counsel for the respondent has argued that because of publication of false news item, the respondent was suspended, and great inconvenience was caused to him and the news item was published to harass the respondent as the respondent was the only driver of ambulance of SDH Surankote.
7. Heard learned counsel for the parties and perused the record.

8. The news item published in the daily newspaper Early Times is extracted as Under:

“SDH Surankote ambulance turns load carrier:

Early Times Report: Surankote, Apr 24 Ambulance of Surankote Hospital has been turned into a load carrier. Locals said that most of the times when there is any emergency the officials of hospital say that the ambulance is unavailable but the govt vehicles can be seen commonly serving the officials of the department. They also added that many officers misuse their post and use govt vehicles for their personal use. They said that whenever there is some case of emergency, the hospital authority says ambulance is not available and people are forced to look for alternatives. When the issue was raised, the CMO Poonch assured action. Cap SDH Surankote ambulance used as a load carrier by hospital authorities.”

9. It is contended by the petitioner that the news item has neither been published at the instance of the petitioner nor the news item refers to the respondent. A perusal of the news item clearly reveals that there is no reference that it was published pursuant to the information provided by the petitioner, as it has been simply mentioned below the heading of the news item “Early times Report”. Name of the correspondent, on whose information, this report was published has not been mentioned in the newspaper. Further, name of the respondent has also not been mentioned in the news item. The respondent on his own has assumed that this news pertains to him.
10. Alongwith the objections, the respondent himself has placed on record the communication dated 25.04.2018 addressed by the BMO, Surankote to CMO, Poonch, wherein it is mentioned that the registration number of the ambulance van of CHC Surankote is JK02AL-8917 and the ambulance shown in the media is bearing registration No. JK12A-4523 and the said vehicle is of JNV, Surankote. Merely because the respondent was

suspended rightly or wrongly would not establish any cause to the respondent to prosecute the petitioner, particularly when there is nothing on record to demonstrate that the news item was got published at the instance of petitioner. Further, this Court finds that the learned Magistrate, while recording the statement of the respondent/complainant under Section 200 Cr. P.C. has not recorded the said statement on oath, which the learned Magistrate was under obligation to record the same on oath in terms of Section 200 Cr. P.C. The Magistrate has issued the process against the petitioner for commission of offence of defamation in a mechanical manner and it is quite strange that no witness has been examined by the respondent in support of his complaint, particularly when the allegation against the petitioner is to defame the respondent.

11. The Hon'ble Supreme Court of India in **“M/s JM Laboratories and others vs. State of Andhra Pradesh and Anr¹”**, has held as under:

“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 6 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

¹ 2025 INSC 127

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 7 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:

“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 8 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.”

8. This Court could have remanded the matter back to the learned trial court because of infraction of Section 200 Cr.P.C on the part of the learned Magistrate while recording statement of the complainant but in view of the above discussion, this Court is of the considered view that no offence is made out against the petitioner, as such, the instant petition is allowed and the proceedings in the complaint titled “*Mohd. Safeer vs. Rajesh Tandon*” under Section 500 RPC pending before the JMIC, Surankote are quashed.

9. **Disposed of.**

(RAJNESH OSWAL)
JUDGE

Jammu
20.02.2025
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.