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**(2006) 05 P&H CK 0034**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 55803-M of 2005**

Anu Joshi

APPELLANT

Vs

State of Haryana and another

RESPONDENT

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**Date of Decision : 24-05-2006**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 420, 467

**Citation : (2007) 1 RCR(Criminal) 567**

**Hon'ble Judges : H.S. Bhalla, J**

**Bench : Single Bench**

**Advocate : R.M. Singh, R.S. Badhran, for the Appellant; Ajay Gulati, AAG, Haryana For the Respondent No. 2, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

H.S. Bhalla, J.—Through this petition, the petitionr has prayed for quashment of criminal complaint titled as "Pala Ram v. Sher Singh and others" (Annexure P-1) filed by respondent No. 2, which is pending in the Court of Chief Judicial Magistrate, Karnal and summoning order dated 14.3.2005 (Annexure P-2) passed by the learned Chief Judicial Magistrate, Karnal, whereby the present petitioner and others have been summoned under Sections 420/467/468/470/471 and 120-B of the Indian Penal Code.

2. Adumbrated facts of the case are that respondent No. 2 Pala Ram advanced a loan of Rs. 3,78,000/- from the UTI Bank for the purchase of a tractor and implements, after mortgaging his land with the said bank as a collateral security. Respondent No. 2 furnished an affidavit duly sworn in by him that he is owner in possession of the land measuring 24 kanals 4 marlas situated in village Agondh, tehsil and district Karnal as per jamabandi for the year 1999-2000. On the basis of the documents furnished by respondent No. 2, the aforesaid Bank sanctioned a loan to the tune of Rs. 3,78,000/- in his favour, which was to be repaid in 12 half yearly instalments at the rate of Rs. 31,500/- along with interest due each on half yearly reducing basis. Respondent No. 2 duly executed a demand

promissory note dated 22.7.2003 in favour of the said bank, a copy of which is annexed with the petition as Annexure P-3. Respondent No. 2 purchased a tractor make 'Swaraj' 855 from JCBL Auto Private Limited, Karnal. The Bank issued a bank draft for a sum of Rs. 3,07,890/-, being the price of the tractor, in favour of the aforesaid company. Respondent No. 2 got the tractor in question registered with the Registering Authority, a copy of which is annexed with the petition as Annexure P-4. He also got the tractor insured with the Oriental Insurance Company, a copy of which is annexed with the petition as Annexure P-5. In addition to this, respondent No. 2 purchased implements for a sum of Rs. 85,000/- from Dhillon Tractors and Implements, Nissing, district Karnal and the aforesaid Bank made the payment thereof vide pay order No. 4583 dated 21.8.2003 for a sum of Rs. 70,110/-. It has been averred in the petition that respondent No. 2 even failed to pay his first instalment of the loan amount to the said bank, which became due on 1.2.2004. Finding no other alternative, the bank was constrained to serve a legal notice dated 3.7.2004 through its counsel upon respondent No. 2 and his guarantors, a copy of which is annexed with the petition as Annexure P-8. It has been further averred in the petition that respondent No. 2, instead of repaying the instalments of the loan amount, filed a criminal complaint dated 19.10.2004, Annexure P-1, before the Court of learned Chief Judicial Magistrate, Karnal, levelling allegations against the bank authorities. On the basis of the complaint filed by respondent No. 2 and the preliminary evidence recorded by the learned trial Court, accused persons (mentioned in the complaint) were summoned under the various sections of the Indian Penal Code. Hence, this petition.

3. Learned counsel appearing for the petitioner has, at the very outset, contended that the learned trial Magistrate has committed a grave error while passing his order dated 14.3.2005, vide which the petitioner along with others was summoned, in not assigning any valid or cogent reason on the basis of which, offences under Sections 420/467/468/470/71 and 120-B of the Indian Penal Code are alleged to have been made out against the accused persons. Learned counsel has further contended that the learned trial Magistrate, while passing his order dated 14.3.2005, has mentioned the word "sufficient evidence" available on the record, on the basis of which, the petitioner along with others was summoned, but no evidence, in fact, has been mentioned or discussed, as is apparent from the order passed by him. In such like circumstances, the order dated 14.3.2005 passed by the learned trial Magistrate, without assigning any reason, does not survive in the eye of law and is liable to be set aside.

4. I have heard the learned counsel for the parties and gone through the record of the case.

5. Having heard the learned counsel for the parties and going through the impugned order dated 14.3.2005 passed by the learned trial Court and other material available on record, I am of the considered view that the learned trial Magistrate, except for using the term "sufficient evidence", fell into a grave error

in not discussing even the evidence of the complainant and his witnesses, which are mandatory in nature, on the basis of which, the opinion with regard to summoning of the accused persons is formed. Merely using the terms "sufficient evidence" by the learned trial Magistrate, is not enough for summoning the accused persons, unless some cogent evidence and valid reasons are discussed/assigned, while passing his order. In the absence of these ingredients, the order passed by the learned trial Magistrate, without being discussed the evidence is bad in law and is not sustainable in the eye of law and is liable to be set aside on this ground alone. Further, the order passed by the learned trial Court does not speak about "what sufficient evidence is available on the file," on the basis of which, it came to a conclusion that the alleged offence has been committed by the accused persons and they are liable to be summoned under the aforementioned sections of the Indian Penal Code. If at all, there was any sufficient evidence available on the file, the learned trial Magistrate must have discussed the same while passing the order, but he failed to do so. For the sake of convenience, I would like to reproduce the relevant portion of the order passed by the learned trial Magistrate, which is as follows :-

After perusing the report of the SHO as well as documents placed on file, there is sufficient evidence on file to prove that accused have committed the alleged offence. There is no reason to disbelieve and discard the report of the complainant have been substantiated, hence all the accused be summoned under Sections 420/467/468/470/71 and 120-B of the Indian Penal Code on filing of P.F. and copies of complaint from 20.7.2005.

6. Without going into the merits of the case, lest it should prejudice the rights of the party, it is crystal clear from the order reproduced above that the order passed is without assigning any reason and in such like circumstances, the order vide which the accused persons were summoned, is a non-speaking and is bad in law and the accused persons, in this manner, should not be summoned to face trial for the offences mentioned above.

In view of the above discussion, the petition is allowed partly. The order dated 14.3.2005 passed by the learned trial Magistrate, vide which the accused persons have been summoned by the learned trial Court, is hereby quashed.

However, before I part with this order of mine, I would like to observe that this order is confined only to the summoning order and not to the complaint. The trial Magistrate would be at liberty to pass a fresh comprehensive speaking order, discussing the evidence available on the file and also assigning the reasons arrived at by him, while passing his order, in accordance with law.

Parties are directed to appear before the learned trial Court on 1.8.2006.