

(2008) 11 CHH CK 0032
In the Chhattisgarh High Court

Herenand Kashyap

APPELLANT

Vs

Krishi Upaz Mandi Samiti and Others

RESPONDENT

Date of Decision : 18-11-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 200

Citation : (2010) 3 MPHT 79

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—This petition is directed against the order dated 30-1-2002 passed by the Judicial Magistrate First Class, Saraipali, in Complaint Case No. 79/2002 whereby the learned Judicial Magistrate, First Class has taken the cognizance and issuing the process against the applicant on the basis of written complaint filed by the non-applicant No. 1.

2. The order is challenged on the ground that without there being examining the complainant, an order taking cognizance is in violation of the provisions of Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

3. I have heard learned Counsel for the applicant and perused the order impugned, copy of complaint as also other documents. The non-applicant No. 1 is public body and complaint is filed on behalf of public body through its Secretary who is public servant and has acted in discharge of his official duty. Law relating to the need of examination of the complainant under Chapter XV of the Code is plain and unambiguous. Examination of the complainant is not sine qua non in all cases. Section 200 of the Code reads as under:

200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to

writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192:

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not reexamine them.

4. In this case, non-applicant No. 1 who is public body has filed a complaint through its Secretary who is also public servant and has acted in discharge of his official duty. The Court below after taking into consideration the facts that non-applicant No. 1 is public servant and has filed a complaint in discharge of his official duty has not examined the complainant and passed an order of issuance of process. The Court below is empowered in accordance with Clause (a) to the proviso to Section 200 of the Code. The Courts below has not committed any illegality and rightly proceeded in accordance with law.

5. Consequently, the petition being devoid of merit is liable to be dismissed and it is hereby dismissed.

6. In view of the above, M. (Cri.) P. No. 921/2002 and I.A. No. 5056/2002 stand disposed of.