



  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Criminal Writ Petition No. 745/2018

1. Prateek Sood S/o Shri Praveen Kumar Sood, Aged About 34 Years, R/o- E-70, Hanuman Path, Shyam Nagar Vistar, Jaipur, Raj. At Present- Flat No.204, Ridhi Raj Flats, Park Central, Near Narayan Singh Circle, Jaipur Raj.
2. Sonam Yangden D/o Shri Tashi, Aged About 24 Years, R/o- Thimphu, Bhutan, Bhutanese.
3. Th Chrimi D/o Lunkhan, Aged About 32 Years, R/o- Harkui Kathe Tang Ukhrul Dist Demipur, Manipur.
4. Aoli Zhimo D/o Shekaho Zhimo, Aged About 25 Years, R/o- 1 Ghowto, Dimapur, Nagaland.
5. N Langkim D/o Ngauping, Aged About 23 Years, Dikiuram Tamai Tamebglong Manipur
6. Atseinuo Kense D/o Salie, Aged About 31 Years, R/o- H.no.- 127, Phophema Basa Vill Puophema Basa Dist. Kohima.
7. Surendra Singh S/o Shri Sughan Singh, Aged About 50 Years, R/o- Plot No. 294-17A Saad Nagar, P.S. Palam, Delhi.

----Petitioners

Versus

1. State Of Rajasthan, Through PP
2. Sandhya Yadav D/o Shri Rp Yadav, R/o 69, Hanuman Path, Shyam Nagar Extension, Jaipur, Raj.

----Respondents

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For Petitioner(s) : Mr. Samarth Sharma  
 For Respondent(s) : Mr. M.K Sheoran, PP

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**HON'BLE MR. JUSTICE ANIL KUMAR UPMAN****Order****26/04/2024**

1. This criminal writ petition has been filed on behalf of the petitioners seeking quashing of FIR No.547/2017 registered at Police Station Vaishali Nagar, District Jaipur and all consequential proceedings arising out of it including order taking cognizance dated 04.10.2017 passed by learned Additional Civil Judge cum Metropolitan Magistrate No.14, Jaipur Metropolitan in Criminal Case No.670/17.

2. Learned counsel for the petitioners submits that the impugned FIR has been filed with malice and ulterior motive. It is contended that relations between petitioner No.1 and respondent No.2 are not cordial and in order to settle personal score, impugned FIR has been lodged, wherein, false and frivolous allegations have been levelled just to humiliate and harass petitioner No.1 and his relatives. Counsel submits that entire proceedings initiated by police is illegal as same is in violation of mandatory Sections 13, 14 and 15 of The Immoral Traffic (Prevention) Act, 1956 (in short 'PITA'). It is also contended by learned counsel for the petitioners that after filing charge-sheet in the matter, learned trial court vide order dated 04.10.2017 took cognizance for the offences punishable under Sections 3, 4, 5, 6 & 7 of the PITA Act. A bare perusal whereof clearly reveals that the learned trial court in a quite mechanical manner and without application of mind, by merely filling the blanks in a stereo typed



format, has passed the order taking cognizance. He further submits that the order dated 04.10.2017 shows that the learned trial court has not applied its mind while taking cognizance and has just fulfilled empty formalities. He thus, prays that the impugned FIR and all other consequential proceedings including the order taking cognizance dated 04.10.2017 may be quashed.



3. Per contra, learned Public Prosecutor vehemently opposes the submissions of the petitioner's counsel. He, however, does not dispute the fact that the order taking cognizance dated 04.10.2017 is a typed format with blanks and while filling up these blank, the same has been passed.

4. I have heard and considered the submissions advanced at bar and have gone through the material available on record.

5. So far as the prayer of the petitioners' counsel seeking quashing of the impugned FIR is concerned, a bare perusal of FIR, discloses commission of cognizable offences and after thorough investigation, police has also submitted charge-sheet against the petitioners. The case of the present petitioners does not cover under any guidelines issued by the Hon'ble Apex Court in the case of ***State of Haryana versus Choudhary Bhajan Lal reported in AIR 1992 SC 604***. Thus, I am of the considered opinion that



no interference is called for by this Court so as to quash the impugned FIR.

6. However, this Court deems it fit and proper to make certain observations on the order taking cognizance as this Court is not convinced and satisfied with the manner and way, same has been dealt with by the learned trial court.

7. At the stage of cognizance, it is mandatory for the learned trial magistrate to consider the entire documents submitted along with the charge-sheet/complaint and the evidence adduced in support of complaint in order to find out prima facie case against the accused to issue process. Initiation of the criminal proceedings is not mere formality for the learned magistrates and when charge-sheet or complaint is submitted before them then learned magistrate is not to act as a mouth piece or as a post office for the prosecution. At the stage of cognizance, it is expected from the learned magistrate to examine the material produced by the investigation agency or complainant and to examine basic infirmities which appear in the prosecution case. It is true that at the stage of cognizance, meticulous examination of evidence is not required but for limited purpose of issuance criminal process, the learned magistrates are at least, required to apply judicial mind as initiation of criminal prosecution is a very serious issue because criminal action against a party means they have to deal with police, court hearings, loss of reputation and a variety of other kinds of pressure.



8. Though, the word 'cognizance' has not been defined in the criminal procedure code, but the meaning of cognizance can be derived from the number of precedents and judicial pronouncements. The dictionary meaning of cognizance is taking account of, taking note of, to gain knowledge about, to have knowledge regarding something. The meaning of Cognizance given in Black's Law Dictionary, reads as under:

*Cognizance- Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter, or power and authority to make it.*

9. In **Ajit Kumar Palit v. State of West Bengal, AIR 1963 SC 765**, Hon'ble Supreme Court has held as under:

*.....The "word cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means - become aware of and when used with reference to a Court of Judge, to take notice of judicially..*

10. In **Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64**, the Hon'ble Apex Court has observed as under:-

*.... though, the term 'cognizance' has not been defined either in the 1988 Act or the Cr.P.C, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance*



*cognizance is "taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially.*

11. In **State of W.B. and Another vs. Mohd. Khalid and Another, (1995) 1 Supreme Court Cases 684**, the Hon'ble Apex Court has held as under:

*"Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. It has, thus, reference to the hearing and determination of the case in connection with an offence."*

12. In **R.R. Chari v. State of U.P., AIR 1951 SC 207**, the Hon'ble Apex Court has held as under:-

*"taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of offence."*

13. It was further held by the Hon'ble Apex Court that it can be said that any Magistrate has taken cognizance of any offence under Section 190 Cr.P.C., he must have applied his mind for the



purpose of proceeding in a particular way as indicated in the subsequent provisions of Chapter. Taking cognizance of an offence is the first and foremost step towards trial. Cognizance literally means knowledge or notice, and taking cognizance of offence means taking notice, or becoming aware of the alleged commission of an offence. Obviously, the judicial officer will have to take cognizance of the offence before he could proceed to conduct a trial. A Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiate proceedings in respect of offence which is said to have been committed. It bears repetition to state that taking cognizance is entirely an act of the Magistrate.

14. Taking guidance from all the above mentioned pronouncement of the Hon'ble Apex Court, it can be safely concluded that before taking cognizance judicial mind must be applied by the learned Magistrate.

15. Now adverting to the facts of the present case, this court finds that from bare first look of the order taking cognizance, it reveals that judicial mind was not applied by the learned magistrate while taking cognizance. In printed pro-forma, cognizance has been taken by filling the blank spaces. Such practice adopted by the learned trial court cannot be endorsed rather it should be deprecated. For ready reference scan copy of the order impugned:-





769/22  
24/2/22  
mm-15

Case No. - 44214/17

7/4/18

17/2/17  
19/5/18

Form no. III  
फॉर्म अहकाम  
(विभाग 220)

अज अदालत - महानगर मजिस्ट्रेट कोर्ट, 14, जयपुर महानगर (संज.)

सरकार बनाम पति कृष्ण

क्रिम मुकदमा नियमित अपराधिक प्रकरण संख्या

वाराड हुकन	हुकम या कार्यवाही मय इनिशियलस जज	नम्बर व तारीख अहकाम जो इस हुकम की तामील में जारी हुए
2/1/17	20/7/20	558/15 21-7-18
सहायक लोक अभियोजक प्रथम/द्वितीय ने यह आरोप पत्र पुलिस थाना अभियुक्त की ओर से एफ.आई.आर. नम्बर में		(SILVIA)
(1) लाल SONAM		(CHAME)
(2) CHIRMI		(SONAM)
(3) ALOLI ZHIMO		Surender (SURENDRA)
(4) N LANGKIM		(PRADEEK)
(5) ATSEINUO		
(6) 131-3		
(7) 131-3		
के विरुद्ध धारा 3, 4, 5, 6, 7 Pita Act		
के अपराध में पेश किया, कार्यालय रिपोर्ट ली गई जिसका अवलोकन किया गया। पत्रावली पर उपलब्ध तथ्यों व साक्ष्य से उपरोक्त मुल. के विरुद्ध धारा 3, 4, 5, 6, 7 Pita Act		
के अपराध में प्रसंगान लेने हेतु प्रथमदृष्ट्या पर्याप्त आधार उपलब्ध हैं अतः उपरोक्त मुल. के उपरोक्त धारा 3, 4, 5, 6, 7 Pita Act		

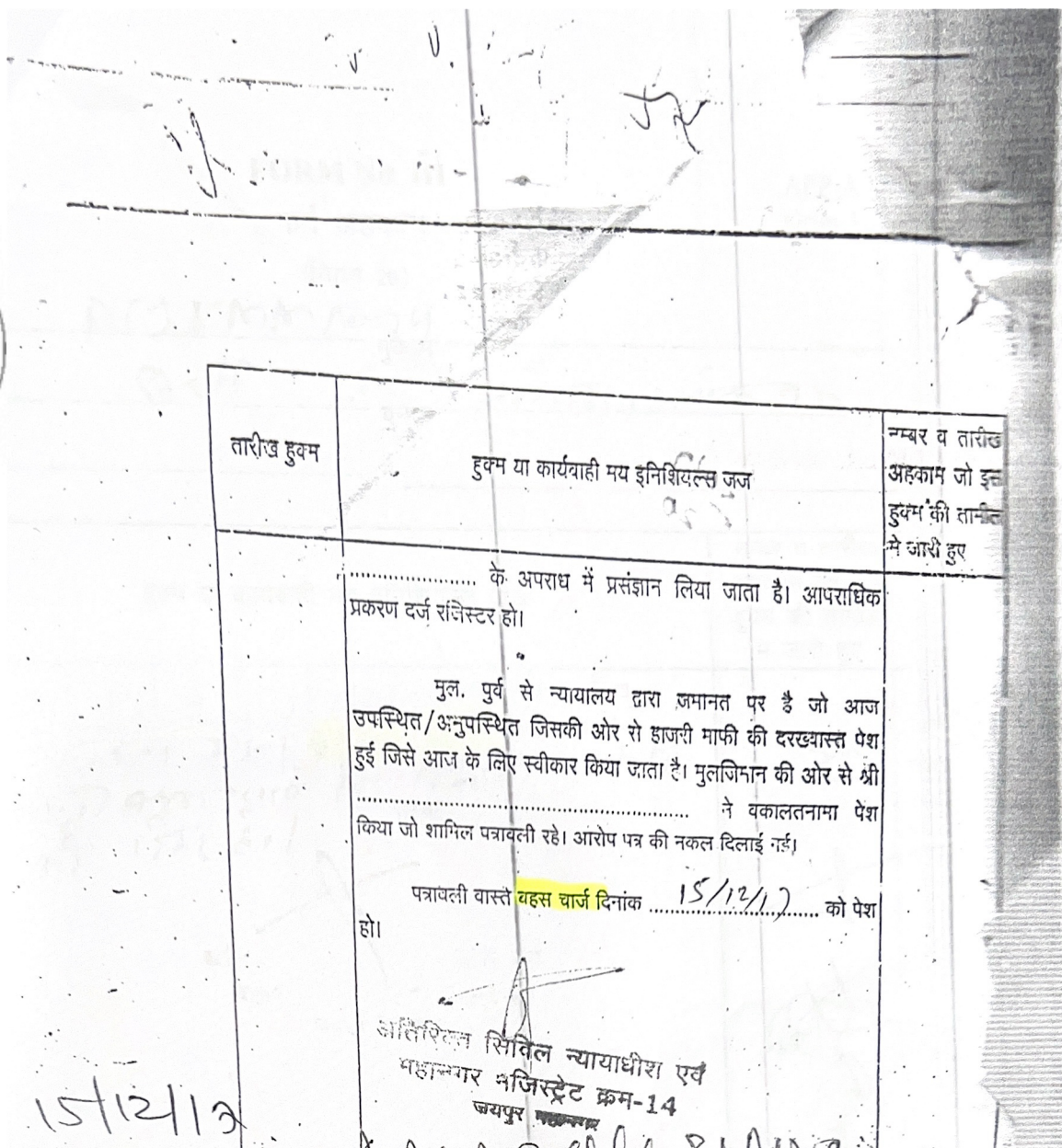
जालंधर प्रतिपक्षी

4/11/17

3/4/5/6/7 Pita Act

मुख्य प्रतिलिपि  
प्रतिपक्षी शाखा  
(जुजिस्ट/एन आईएन कोर्ट)  
जिला एवं सेशन न्यायालय  
जयपुर महानगर कोर्ट





16. Aforesaid issue was considered by this Court and extreme displeasure was expressed in case of **Monica and Vinay Malhotra v. The State of Rajasthan Through Pubic Prosecutor**, reported in 2011 (2) CriLR 1750 and held as under:

“30. What is still more disturbing is to note that the learned court of ACJM has also mechanically passed the order taking cognizance against petitioners on a printed pro-forma, which cannot at all be appreciated. No doubt, at the stage of taking cognizance, the court is not required to sift and appreciate evidence but at the same time, a court of law cannot be expected to



work mechanically and pass orders of taking cognizance by just filling in the blanks on a printed pro-forma, wherein some columns have been left unfilled to be filled on case to case basis. How possibly a judicial magistrate could frame an order taking cognizance in this fashion, can neither be appreciated nor approved. This belies the judicial application of mind.”

17. The Hon'ble Supreme Court in the case of **Lalankumar Singh v. State of Maharashtra**, reported in AIR 2022 (SC) 5151 has observed in paragraph no. 28 that order of issue of process is not an empty formality. Learned Magistrate is required to apply his mind as to whether the sufficient ground for proceeding exists in the case or not and held as under:-

*"28. 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 vs. Central Bureau of Investigation**, 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 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 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."*

18. In view of the aforesaid discussion, this Court is of the considered opinion that merely filling up the date, name of the accused person/s, mentioning offences and case number in printed pro-forma and then putting signatures by the concerned



Presiding Officer reflect complete non-application of mind because the cognizance order must reflect prima-facie opinion of the learned Magistrate on the material collected during investigation. Order of issuance of process is not an empty formality as it may affect the personal liberty of a person. Article 21 of Constitution of India guarantees personal liberty of a person and same cannot be deprived of, without due procedure of law. Apart from this, summoning of accused to appear before criminal court after taking cognizance is a serious matter, affecting the dignity, self-respect and his/her image in society. Therefore, proper process by the criminal court must be followed at the time of taking cognizance and summoning the accused.

19. Consequently, this writ petition is partly allowed. The order taking cognizance dated 04.10.2017 passed by learned Additional Civil Judge cum Metropolitan Magistrate No.14, Jaipur Metropolitan in Criminal Case No.670/17 is quashed and set aside. The learned trial court is directed to pass a fresh order on the issue of cognizance in light of the law laid down in the afore-cited case laws.

20. Registrar General is directed to circulate copy of this order among all judicial magistrates of Rajasthan State Judiciary, so that such practice of filling in the blanks in printed formats may be avoided.

(ANIL KUMAR UPMAN), J

GAUTAM JAIN/71