

Amrik Singh Vs. State Etc.

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Court : Delhi

Decided On : Feb-26-1975

Reported in : ILR1975Delhi69b; 1975RLR69

Judge : Jagjit Singh and; Mohinder Singh Joshi, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 201 and 204

Appeal No. : Criminal Revision Appeal No. 158 of 1974

Appellant : Amrik Singh

Respondent : State Etc.

Advocate for Pet/Ap. : K.B. Kalra,; R.N. Dixit and; B.P. Singh, Advs

Judgement :

M.S. Joshi, J.

(1) One Ram Chand Chopra filed a complaint against Amrik Singh and the facts alleged tended to make out offences under sections 420 and 406 Indian Penal Code . To support the complaint Ram Chand gave his own statement and offered some documentary evidence. The magistrate passed an order for the summoning of the accused because on Consideration of the evidence a prima facie case under section 420 I. P. C. was made out against him. The accused approached the Session Court impugning the magistrate's order on the ground it was not a

speaking order and deserved, therefore, to be quashed. He cited authorities of this Court in *Manohar Lal Sharma v. Prem Lata*, (1973) 9 D.L.T. and *Mukarb Karim v. Bundu*, (1973) 9 D.L.T. 318. The Additional Sessions Judge found these authorities to be fully applicable to the case and made a recommendation under section 438 of the Criminal Procedure Code for the order under attack being set-aside. The revision petition came up before Ansari, J. for hearing. He noted that apart from the two cases referred to by the Additional Sessions Judge there are two more cases *Udey Bir Singh v. Smt. Shakuntla Devi*. (1973) 9 D.L.T. 382 decided by Safeer, J. and *Lakshmi and another v. State*. 1974 Cr. R. 75 decided on 10.4.74 by Aggarwal. J. taking the same view. A different view was, however, expressed by V. D. Misra. J. in *R. N. Bhalla v. Chatur Sain Gupta*. Cr. R. 303 of 1970 decided on 8.9.70 and by Ansari, J. himself in *N. P. Chauhan v. Nirmal Kumar Chauhan* Cr. R. 104 of 1972 decided on 15.5.72. Because of this conflict of opinion he referred the matter to the Hon'ble Chief Justice for its being placed before a Division Bench and an order was passed accordingly.

(2) There was another complaint instituted by Lachman Singh and in that offences covered by sections 323, 451 and 120-B read with section 34 Indian Penal Code . were said to have been committed by Raja Ram and some other accused. This case came up before Shri Bharat Singh, Judicial Magistrate 1st Class. He examined the complaint and one more witness produced by him satisfied by this evidence that there were grounds to proceed further against all the accused persons u/s/ 323/451//34/120B Indian Penal Code ordered their being summoned. Raja Ram accused urged in the Court of Session by way of a revision petition instituted under section 435 of the Criminal Procedure Code . that the order in question was not a speaking order and as such it could not be said that the magistrate had applied his mind to the facts of the case. The argument did not find favor with the Additional Sessions Judge and he dismissed the revision petition. Raja Ram then moved this Court through Cr. R. No. 9 of 1974 and prayed for the quashing of the relevant order under section 439 Criminal Procedure Code . The revision petition was put up before Ansari, J. and he referred this case also to a Division Bench for the reasons given in Cr. R. No. 158 of 1974 (*Amrik Singh v. State and another*).

(3) Shri Manjit Singh, Judicial Magistrate 1st Class dealing with the complaint of Minati Basu against Shri K. J. Bose and his two sons heard the counsel for the complainant, went through the entire evidence on the record and satisfied that a prime facie case was made out under section 342/500/34 Indian Penal Code . against all the accused persons, ordered that they be summoned. Shri N. L. Kakkar. Additional Sessions Judge, heard the revision petition filed by the accused persons and following the dictum of this Court in Manohar Lal v. Prem Lata made a recommendation for the impugned order being set aside. The conflicting decisions of Safeer, Aggarwal, V. D. Misra and Yogeshwar Deyal, JJ. in different cases were brought to the notice of Sachar, J. before whom this revision petition No. 188 of 1974 came up for disposal and he thought it proper that this matter be heard and decided along with Cr. R. No. 158 of 1974.

(4) The last case with us arises from a complaint lodged by M/s. Swan India (P) Ltd. against D. D. Sharma. In his order dated 26.4.74 the magistrate who had taken cognizance of the matter said that he had pursued the evidence adduced by the complaint under section 202 Criminal Procedure Code . and this evidence provided a sufficient ground to proceed against the accused as he, according to the case of the complainant, had dishonestly induced the complainant to part with money. After attending the Court in pursuance of the process issued D. D. Sharma applied for exemption from appearance under Section 205 Criminal Procedure Code . but his request was turned down by the magistrate. The accused then filed a petition in this Court under Article 227 of the Constitution for the magistrate's proceedings being quashed Cr. M. (M) 99 of 1974. The petition came up before Sachar, J. and for reasons similar to those he advanced in Cr. R. No. 188 of 1974. this case too was referred to a Division Bench.

(5) All these four cases are being taken up together because the question involved in them is common : 'Is the Magistrate issuing process under section 204 of the Criminal Procedure Code 1898 required by the law to pass a speaking order, that is, to state reasons for doing so ?'

(6) We will start consideration of the matter by referring to the cases cited by the petitioners' counsel in support of their contention that as a condition precedent to

the issuance of process under section 204 Cr. P. C. the magistrate must apply his mind to the material referred to in section 203 and by way of proof of this application of mind he must record a speaking order.

(7) In *Mubark Karim v. Bundu* (1973) 9 D. L. T. 318, there were accused persons. The magistrate heard arguments of the complainant's counsel and directed five of them, against whom the complainants' evidence furnished good grounds to proceed under sections 147/323/149 I .P.C., to be summoned. The order did not contain brief reasons for the dismissal of the complaint in respect of the rest of the three accused persons and the aggrieved complainant, therefore, filed a revision petition in the Court of Session challenging its validity. The Additional Sessions Judge made the desired reference and on its coming up for adjudication Safer, J. defining the scope of the provisions of Sections 203 and 204 of the Criminal Procedure Code observed :-

'THE Magistrate has, while acting under either of them, to apply his mind to the material and then form the judgment whether he is to proceed or not against the accused. The opening words used in section 204 of the Code make it obligatory that the opinion of the Magistrate must be based on sufficient grounds which must be apparent from the order which he may pass and be available for judicial scrutiny at the hands of the Courts of superior jurisdiction. Where an order is passed under section 204 of the Code summoning any person, in case such person fails to appear in spite of service he is liable to be arrested in consequence of a warrant which may then be issued to secure his presence. The foundation of issuance of a warrant would be the non-compliance with the summons served. The summons, however, will find its sanction in the order passed under section 204 of the Code. Such an order, howsoever wide the discretion may be, must be speaking order making it manifest that the discretion has been judicially exercised. An order passed under section 204 of the Code is open to scrutiny within the scope of section 439 of the Code. The order must, therefore, state the sufficient grounds which may have led to the formation of the opinion that a case had been made out turn proceeding against the accused persons'.

Asimilar view was taken by the learned Judge earlier with reference to the provisions of Section 20A of the Food Adulteration Act, 1954 in K. M. Misra v. The State Cr. R. No. 305 of 1971 decided on September 21, 1971 and it was reiterated by him in Udey Bir Singh v. Smt. Shakuntla Devi, (1973) 9 D.L.T. 382 and Manohar Lal Sharma v. Smt. Prem Lata and others (1973) 9 D.L.T. 379.

(8) The revision petition entitled Lakshmi and another v. State, Cr. R. 75 of 1974 was accepted by Aggarwal, J. on 10-4-1974 so as to set-aside the order of the magistrate to proceed against certain accused persons for the reasons stated by the Additional Sessions Judge, i.e. it suffered from arbitrariness and did not disclose that Judicial mind was applied to the material available and for this decision strength was derived from Manohar Lal Sharma v. Smt. Prem Lata and others, (1973) 75 P.L.R. (Delhi) Section 268, a case to which reference has already been made above).

(9) Another order of a magistrate purporting to have been passed under section 204 Criminal Procedure Code . was attacked before Aggarwal, J. in pursuance of a reference by an Additional Sessions Judge in Mittar Sain etc. v. Ram Chander (Cr. R. 277 of 1973 decided on 3-9-1973) on the ground it had been made without applying the mind of the court to the material on the record but the learned Judge held that there was a prima facie case for proceeding under section 204 and the petition was dismissed.

(10) The principle laid down in Manohar Lal Sharma v. Prem Lata, (supra) was endorsed by Yogeshwar Dayal, J. in Banarsi Lal Sachdeva and others v. Raj Rani, Cr. R. No. 85 of 1974 decided on 5-6-1974, yet it was remarked that 'speaking order' does not mean an elaborate order and the application of the mind can also be seen from the way a magistrate considers the material placed before him.

(11) In Madhya Pradesh Industries Ltd. v. Union of India and others, : [1966]1SCR466 invoked by the petitioners, the order of the Central Government exercising powers of revision against orders of the State Government of Madhya Pradesh in a case arising under Mineral Concession Rules, 1960 refusing to grant a mining lease without giving reasons was assailed. Though the Supreme Court upheld the order of the Central Government in this case, their Lordships observed:

'If tribunals can make orders without giving reasons, the said powers in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard.'

(12) We now advert to the cases which uphold a view contrary to that taken in Mubark Karim's case and the cases which sought guidance there from.

(13) In *Hafizar Rahman v. Aminul Hoque*, : AIR1941 Cal185 it was argued before the Court that the Honorary Magistrates who passed the orders in question had no material before them from which it was possible for them to reach an opinion that there was sufficient ground for issuing process but the learned Judge held:- 'It is not necessary that the opinion to this effect within the meaning of section 204 Criminal P.C., should be based on evidence in the case nor the reasons for such an opinion should be recorded. In all the three cases the sworn statements, the reports of the enquiring officers under S. 202 of the Code and the petitions of complaint were before the learned Honorary Magistrates. It must be presumed that they had perused these documents and the other papers on the record and that, after having done so, they were of opinion that there was sufficient ground for proceeding against some of the accused persons other than those in respect of whom process had originally been issued.'

(14) Proceeding on those very lines Ansari, J. held in *M. P. Chauhan v. Nirmal Kumari Chauhan*, Cr. R. 104 of 1972 decided on 15-5-1972 that a magistrate is not required to pass a speaking order under section 204 Criminal Procedure Code

(15) In *R. N. Bhalla v. Chatur Sain Gupta*, Cr. R. 303/70 decided on September 8, 1970 V. D. Misra, J.C found that under the provision of the Code of Criminal Procedure a magistrate is required to examine the complainant and his witnesses (if any) and after he had done so if he finds that there are grounds for proceeding further in the matter, that is, a prima facie case has been made out, he is to

summon the accused under the provisions of section 204, Criminal Procedure Code and he need not give reasons of his satisfaction and the order passed by the Magistrate cannot be set aside in revision because making of this order does not go to the root of the matter. It was added that even if it be assumed that the Magistrate should give reasons and he does not do so that will be a mere irregularity.

(16) The question how the Court should make its satisfaction known for the purposes of section 20A of the Prevention of Food Adulteration Act cropped up before a Division Bench of this Court in Inderjit Kumar V. State and another, Cr. R. No. 3 of 1972 decided on 10-8-1973 and it was found that if the order made clearly shows that the evidence produced was considered and it is further mentioned that from that evidence the Court has been satisfied then the mere fact that there is no detailed discussion of the evidence in the order will not make the order illegal.

(17) Our attention has not been invited to any decision of the Supreme Court having a direct bearing on the question under consideration, but there are some pronouncements of their Lordships affording very valuable guidance for its answer.

(18) The authorities of the Supreme Court which were relied upon in the cases of Mubark Karim and Manohar Lal Sharma (supra) decided by Safeer, J. (Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar and another, : [1961]1SCR1 and Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, : AIR 1962 SC876 were, incidentally, both concerned with orders passed under section 203 Criminal Procedure Code . The portion quoted from the first mentioned case was :-

'It is manifestly clear from the provisions of S. 203 that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry'.

The observations to which reference was made from the other case read as follows :- 'He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding'. Debendra Nath Bhattacharyya and others v. The State of West Bengal and another. : 1972 CriLJ1037 laid down :

'THEmagistrate passing an order under section 203 Criminal Procedure Code . is not debarred from going into the merits of the evidence produced by the complainant. But, the object of such consideration of the merits of the case, at this stage, could only be to determine whether there are sufficient grounds for proceeding further or not. The mere existence of some grounds which would be material in desiding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation..... what the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on dis- putable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true'.

(19) The appeal in Nirmaljit Singh Hoon v. The State of W. B. and others, : [1973]2SCR66 arose from the dismissal of a complaint by the Chief Presidency Magistrate and the confirmation of the order of dismissal by the Calcutta High Court. Their Lordships observed in para 22 of their judgment that :-

'THEobject of the examination of the complainant and his witnesses under S. 200 Criminal Procedure Code . is to ascertain whether there is prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided, thereforee, to find out whether there is or not sufficient ground for proceeding. . . -The words 'sufficient ground' used also in Section 209 have been construed to mean the satisfaction that a prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction.'

(emphases added).

THEIRLordships referred to the case of Vadilal Panchal as well and noted that it was held in that case on consideration of the scheme of sections 200 to 203 that :-

'THE inquiry envisaged there is for ascertaining the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process. The section does not say that a regular trial of adjudging the truth or otherwise of the person complained against should take place at that stage, for such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial.'

Their Lordships also noticed the law laid down in *Chaidro Deo Singh v. Prokash Chandra*, : [1964]1SCR639 that :-

'WHERE there was prima facie evidence, even though the person charged of an offence in the complaint might have a defense, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused'.

The conclusion reached was that :-

'UNLESS, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case.'

(20) As was so aptly remarked in *Bankabehari Modi and others v. Ramawatar Saha*, I.L.R.(1967) Cut 73 a magistrate has to examine identical matters i.e. the statement on oath (if any) of the complainant and the witnesses and the result of the investigation of inquiry (if any) under Sections 203 and 204 Criminal Procedure Code . for determining the sufficiency of ground and the two sections must be read as supplementary to each other. But it is to be clearly borne in mind that although 'sufficient ground' is a common factor in sections 203 and 204, the level of satisfaction required of the magistrate about the absence or presence of the said ground to be adjudged under the two respective provisions is not the same. To justify this plurality of approach more one cogent reason suggest itself.

(21) Section 203 falls in the chapter entitled 'of complaints to magistrates' and Section 204(1) in the chapter bearing the caption of commencement of

proceedings before Magistrates'. Whereas section 203 deals with complaints exclusively, section 204 speaks of issue of process when cognizance of an offence is taken by a magistrate and cognizance may be taken by him not only upon receiving a complaint of facts which constitute such offence but upon a police report, upon information received from any person other than a police officer or upon his own knowledge or suspicion that such offence has been committed. So the case of issue of process in a complaint is equated with the case of issue of process in a matter originating with a police report or information received from any person other than a police officer, or the magistrate's own knowledge or suspicion and not with the case of a dismissal of complaint.

(22) When complaint is presented to a magistrate under section 200 Criminal Procedure Code . and he takes cognizance of the offence referred to therein he is required to examine the complainant and the witnesses present, if any, and this preliminary evidence may be considered by him to be adequate enough material for the issue of process under section 204. If the complaint is by a court or a public servant acting or purporting to act in the discharge of his official duties and is in writing the examination of the complainant even may be dispensed with vide S. 200, Proviso (aa). Such a complaint by itself can constitute valid foundation for the issue of process. Section 202(1) contemplates postponement of the issue of process if the magistrate decides to inquire into the case himself or to have an investigation made for ascertaining the truth or falsehood of the complaint but his order for such postponement has to be supported by reasons to be recorded in writing. Requirement of recording reasons for postponing issue of process, and no such requirement if process is to issue, suggests that the legislature intended application of different standards in the two cases. In Section 202 of the new Code of Criminal Procedure (No. 2 of 1974), however, the requirement of recording reasons for postponement of issue of process has also been dispensed with.

(23) An order of dismissal of a complaint, it will go without saying, can be passed by a magistrate having jurisdiction to deal with the matter while an order to issue process can be made even by such magistrate as can take cognizance of the offence but cannot hold a trial for it. In the latter case he will direct the accused to appear before the magistrate having jurisdiction. The difference in the two

provisions is crucial and leaves no doubt in one's mind as to dismissal of a complaint and issue of process on a complaint being not of equal importance.

(24) If a magistrate finds that there is in his judgment no sufficient ground for proceeding he may dismiss the complaint and on the other hand if in his opinion there is sufficient ground for proceeding he shall issue process for the attendance of the accused. It could not be a matter of accident that the exercise of his powers under section 203 was made discretionary and under section 204 obligatory.

(25) Further, the words used in Section 203 are 'there is in his judgment no sufficient ground for proceeding' and in Section 204 'if in the opinion of a magistrate..... there is sufficient ground for proceeding'. Although the magistrate has to take one and the same material into consideration and there is one question before him, whether to proceed or not, choosing of the term 'judgment' in one case and 'opinion' in the other could not be without significance. As per Shorter Oxford English Dictionary 'Judgment' is 'the sentence of a court of justice' 'a judicial decision or order in court', 'any formal or authoritative decision, as of an arbiter' whereas 'opinion' is 'what one opines', 'judgment resting on grounds insufficient for complete demonstration'; 'belief of something as probable or as seeming to one's own mind to be true'. According to Webster's Third New International Dictionary 'Judgment' is 'a formal utterance or pronouncing of an authoritative opinion after judging'; 'a record or statement of the reasons for a specific judicial decision' whereas 'Opinion' 'implies a conclusion concerning something on which ideas may differ, not, however excluding a careful consideration or weighing of evidence or pros and cons, but usually stressing the subjectivity and disputability of the conclusion'. A reference to 'Words and Phrases Legally Defined, Second Edition, would reveal that 'judgment' 'in its widest sense, may be said to include any decision given by a court on a question or questions at issue between the parties to a proceeding properly before the court'; 'an 'opinion' arises when the assent of the understanding is so far gained by the evidence of probability that it rather inclines to one persuasion than to another, yet not without a mixture of uncertainty or doubt'. It was held in *Dr. Hori Ram Singh v. Emperor*, that 'judgment' in the Criminal Procedure Code 'means a judgment of conviction or acquittal'. In *S. Kuppuswami Rao v. The King*, AIR 1949 F.C. 1. it was observed

that the term 'judgment' indicates a judicial decision given on the merits of the dispute brought before the Court and in a criminal case, it cannot cover a preliminary or interlocutory order. An order of committal was held to be 'judgment' in *State of Bihar v. Ram Naresh Pandey and another*, : 1957 CriLJ567 because it terminated the proceedings so far as the inquiring court was concerned.

(26) It is obvious an order of dismissal under section 203 is to be passed when the court is convinced that there is no sufficient ground for proceeding and the holding of a trial will be only waste of time. On the other hand, process is to be issued if there is a bare prima facie case made out by the preliminary evidence entitled to a reasonable degree of credit. The court does not demand at the moment sufficient grounds for conviction because such evidence is to be adduced at the regular trial. If some ground exists which would be material in deciding whether the accused should be convicted or acquitted it would not indicate that the case must fail. It would rather indicate the need for proceeding further in order to discover the truth after a full and proper investigation. As was so pertinently observed in *Nirmal Jit v. State of West Bengal* (supra) if there is much to be said on both sides the case is one for issue of process not for refusal.

(27) The issue of process does not signify that the accused person has been found guilty of the offence complained of in any degree, it only recognizes a liability on his part to appear before the Court and lace the allegations made by the aggrieved party. Even after he has appeared he will continue to have the benefit of the presumption that he is innocent and the burden of proving the commission of the offence by him shall still be resting on the shoulders of the complainant. The complaint may be dismissed if the complainant makes default in depositing the process-fee within reasonable time. It may be dismissed again if the complainant fails to appear on the date fixed for the hearing of the matter provided the offence is compoundable or non-cognizable or the case is a summons case. After the complainant has completed production of his evidence the Court may discharge the accused on having his version of the matter and even without that. The Court may discharge him rather at still earlier stages of the case if it considers the charge to be groundless. The accused can seek composition of the crime from the complainant without bringing the Court in respect of certain offences and with the

permission of the Court in respect of some other offences and in either case, the proceeding ends in acquittal. The accused has of course to be acquitted if it is determined after the trial that his guilt has not been proved beyond reasonable doubt. It is thus clear that when process is issued under Section 204 the proceedings just commence by way of an interlocutory order and attendance of the accused is requisitioned so that the court can hear both the parties and reach its ultimate decision. On the other hand when the complaint is dismissed under section 203 the case is finished through a final order. It is quite reasonable, therefore, for the complainant to expect that he be told what reasons prevailed with the magistrate for his plea being meted out rejection off hand. The order passed by the court may inform him for instance that what he has attributed to the accused does not constitute an offence in the eye of law and the other party has not incurred any criminal liability or that the dispute raised by him is of a purely civil nature and he better seek his remedy from another type of tribunal. In the absence of this information he may not be able to decide what step to take next.

(28) Where the Legislature desires that the court should support its order with reasons it presumably says so. It does not seem to have left much scope for speculation in this behalf while framing the Criminal Procedure Code. We have seen if the magistrate thinks fit to postpone the issue of process after the complainant has been examined, he has to record his reasons. When he arrives at a decision that there is no sufficient ground for proceeding he is required to state his reasons briefly by section 203, sub-section (7) of section 207-A and Sub-section (1) and (2) of section 209 contemplate the discharge of the accused in the course of inquiries into cases triable by the Court, of Session or High Court but in each such case it is imperative for the magistrate to give reasons for passing such an order. An order in writing has to precede the magistrates requiring the parties concerned in the relevant dispute to attend his Court under section 145 Criminal Procedure Code . These are only a few of the numerous available examples. The authors of this Code could not have omitted when drafting section 204 to incorporate the requirement of recording of reasons for an order of issue of process if any were needed.

(29) In *M. P. Industries v. Union of India*, (supra) relied upon by the petitioners, the interests involved were to the tune of lacs of rupees and the objection attributed ill considered rejection by the Central Government of the revision petition filed with it. The Supreme Court said it was essential that reasons be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal but it did not prescribe any particular form or scale of reasons because their nature and elaboration depend necessarily upon the facts of each case. The case under reference was not thought fit for interference in the exercise of Supreme Court's discretionary jurisdiction and the appeal of *M.P. Industries* was, therefore, dismissed. On the other hand in *Som Dutt v. Union of India*, : 1969 CriLJ663 where the prayer was for quashing the proceedings before a General Court Marshal, their Lordships of the Supreme Court observed that apart from any requirement imposed by the statute or statutory rule expressly or by necessary implication it could not be expected that there is any general principle or any rule of natural justice that statutory tribunal should always and in every case give reasons in support of its decision.

(30) The detinue urged before Supreme Court in *John Martin v. State of Bengal*, (Writ Petition No. 467 of 1974 decided on 21-1-75) a case under the Maintenance of Internal Security Act, 1971 that because the order of the State Government rejecting his representation did not disclose any reasons his detention was invalid. Their Lordships referred to an earlier decision of the Court in *Hardhan Saha's case* (Writ Petition No. 1999 of 1973) decided on 21-8-1974, holding that there need not be a speaking order, all that is necessary is that there should be real and proper consideration by the Government and turned down the petitioner's contention.

(31) The absence of the requirement for recording reasons for issue of process under section 204 Criminal Procedure Code . may be considered from another angle as well. A speaking order is aimed at ensuring application of mind and it appears making of a provision for recording of reasons for an order under section 204 Criminal Procedure Code . was though unnecessary because there is an inbuilt guarantee for bestowal of thought to the matter seeking determination in this case. Before an order of issue of process is passed the magistrate has to find out what particular offence (offences) is made out by the preliminary evidence and

what sort of process (summons or warrant) is to be issued for securing the attendance of the accused for which again the gravity of the offence alleged and found prima facie to have been committed is to be weighed and measured. When the magistrate puts down on the file whether a summons or warrant (bailable or non-bailable) is to be issued and for what offence it can, unless there is something flagrant on the record to the contrary, be assumed that he did apply his mind to the matter coming up before him. The omission of the Legislature to provide for recording of reasons for an order of issue of process can, in the circumstances, be taken to be intentional due to its redundancy.

(32) In view of the phraseology of the provisions of section 204(1) it is plain to our mind that before he proceeds to issue process for the attendance of the accused the magistrate has to form an opinion that prima facie there is sufficient ground for proceeding but he does not have to write down his reasons in so many words for adopting that course. The purpose of the law will be quite satisfied it can be gathered from the record of the case that he applied his mind to the material contemplated by Section 200 or Section 202 Criminal Procedure Code, as the case may be, and formed an opinion as to the existence of sufficient ground for proceeding on its basis. There is no requirement of the law for a speaking order analysing the evidence adduced by the complainant or making evident how his mind worked so as to lead him to the issue of process. If such issue of process is challenged before a higher court it can find out from the complaint, the preliminary evidence (if any) and the result of the inquiry or investigation (if any) without any difficulty whether or not the order directing issue of summons/warrant and specifying the offence/offences made out against the accused prima facie was passed after due deliberation and is or is not justified by a sufficient ground. The question embraced by the references is answered accordingly. The revision petitions (Nos. 158/74, 9/74, 189/74) and the Criminal Miscellaneous (Main) (No. 99 of 1974) should now be put up before the learned Single Judges for disposal.