

**B.S. Vohra Vs. Risal Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/684661](http://sooperkanoon.com/684661)

**Court :** Delhi

**Decided On :** Mar-14-1973

**Reported in :** 1974CriLJ177; 9(1973)DLT215; 1973RLR364

**Judge :** Pritam Singh Safeer, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 200

**Appeal No. :** Criminal Revision Appeal No. 24 of 1973

**Appellant :** B.S. Vohra

**Respondent :** Risal Singh

**Advocate for Pet/Ap. :** G.S. Vohra and; C.B. Lal, Advs

**Judgement :**

**Pritam Singh Safeer, J.**

(1) This petition is preferred against the order made by an Additional Sessions Judge, Delhi on 21st of January 1973 in terms where of he refused to interfere with the order made by Shri Yesh Pal Judicial Magistrate, 1st Class, Delhi on the 6th of May, 1972 by which the petitioner was summoned to stand his trial for an alleged offence falling within the purview of S. 500. Indian Penal Code.

(2) I have heard the parties' counsel at some length. On perusing the record I find that the complaint was presented by the complainant Risal Singh on the 18th of September, 1971 when the following order was passed:

'PRESENTED by the complaint along with the counsel Fix 27th September, 1971 for statement of the complainant. Sd/. 18th September, 1971'.

Risal Singh complainant appeared before the trial court on the 27th of September, 1971 and I have perused his statement. The statement has been checked up by the learned counsel appearing for the respondent before me. The statement was not recorded on oath. Section 200 of the Criminal Procedure Code in its opening part. is:-

'A Magistrate taking cognizance of an offence on complaint shall at once (examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate.'

(3) As soon as the complaint was presented before the Magistrate he passed the order reproduced in the earlier part of this judgment. He fixed the 27th of September, 1971 for the examination of the complainant without oath in complete disregard of the opening part of section 200 of the Code.

(4) The order passed under section 204 of the Code on the 6th May, 1972 in one part expresses :-

'PW1 Risal Singh is the complainant himself and corroborates his version in the complaint.'

The complainant having not been examined on oath, no reliance could have been placed on any part of his deposition.

(5) I find that PW2 G.C. Kapur and PW3 M.C Sharma were also examined without oath. Their testimony was also relied upon while passing the order under section 204 of the Criminal Procedure Code. The statements of the complainant and PWs. 2 and 3 could not have been relied upon. The order passed under section 204 of

the said Code suffers from an incurable illegality in as much as the direction in section 200 of the Code to examine the complainant and the witnesses on oath is imperative. The order made on the 6th of May, 1972 summoning the, petitioner is hereby set aside. The record will go back to the Chief judicial Magistrate, Delhi who may again examine the complainant and his witnesses on oath and may proceed with the complaint in accordance with law. The complaint contains serious allegations

(6) Where the complainant or the witnesses are examined on oath and they are found to have stated anything which may be false they may incur prosecution. A statement on oath falls in a distinct category and cannot be equated with a statement which may be made without taking oath. Section 200 of the code was amended by Act 26 of 1955 and the legislative object accomplished by providing that the complainant and the witnesses be examined on oath cannot be allowed to be superseded by the provisions contained in section 537 of the Code. The record will go back: to the Chief Judicial Magistrate before whom the respondent may appear on the 29th of March, 1973. The complainant may be examined on that date in accordance with section 200 of the Code, or on any other date which may then be fixed by the Chief Judicial Magistrate.

(7) No order is needed in respect of Criminal Miscellaneous application 78 and 79 of 1973. Those applications are disposed of and the directions contained in the preceding order prevail.