

Summons to an Accused in a Criminal Case not to be Issued in a Mechanical Manner

Obtaining a final decision for a monetary claim can be an exhausting and long drawn-out process in an Indian court. Over the years, therefore, aggrieved parties began exploring the possibility of setting criminal law in motion even in cases of civil wrong. The obvious intent is to exert pressure on the opposite party to settle the claim to avoid the unpleasantness of a criminal prosecution. Private complaints filed in the Magistrate's court under India's penal laws came to be commonly used to intimidate the opposite party into a settlement.¹ Recently in the matter of *Delhi Race Club (1940) Ltd. and Others v. State of Uttar Pradesh and Another*² ("**Delhi Race Club**"), the Supreme Court of India (the "**Supreme Court**") has expressed displeasure at private complaints being registered and summons being issued in a mechanical manner.

The decision in *Delhi Race Club* acknowledges that calling a person to appear in a criminal court as an accused is a matter affecting one's dignity, self-respect and image in society and should not be used as a weapon of harassment.³ Summoning an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.⁴ A magistrate is not required to act on a complaint simply because such complaint is filed before him.⁵ Before summons are issued to any accused, a magistrate is required to carefully scrutinize the evidence placed by the complainant, and if required question the complainant and the witness(es) to find out

¹ The Supreme Court, in many cases, has held that if the police refuses to register the First Information Report ("**FIR**"), or having registered it do not hold a proper investigation, or comes to the conclusion that no FIR needs to be registered, then it is open for the complainant to file a private complaint under Section 190 read with Section 200 of the Code of Criminal Procedure, 1973 ("**CrPC**"), disclosing relevant facts and persuading the Magistrate to take cognizance of the offence. After taking cognizance of the offence, the Magistrate can order police investigation under Section 202 of CrPC.

² *Delhi Race Club (1940) Ltd. and Others v. State of Uttar Pradesh and Another*, 2024 SCC Online SC 2248.

³ *Mehmood UI Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420.

⁴ *Delhi Race Club*, paragraph 13.

⁵ *Delhi Race Club*, paragraph 15.

the truthfulness of the allegations and examine if any offence is *prima facie* committed.⁶

The judgment in Delhi Race Club succinctly covers the following key issues of law: (a) difference between 'breach of trust' and 'criminal breach of trust', (b) difference between 'cheating' and 'criminal breach of trust', (c) vicarious liability of office bearers of a company in criminal matters; and (d) maintainability of a petition for quashing of summons.

DIFFERENCE BETWEEN 'BREACH OF TRUST' AND 'CRIMINAL BREACH OF TRUST'

The Supreme Court has clarified that unless there is evidence of a manipulating act or fraudulent misappropriation⁷ every act of 'breach of trust' may not result in a penal offence of 'criminal breach of trust'. An act of 'breach of trust' involves a civil wrong in respect of which an aggrieved person may make a claim for damages before the civil courts. However, breach of trust coupled with intention (*mens rea*) gives rise to criminal prosecution.

DIFFERENCE BETWEEN 'CHEATING' AND 'CRIMINAL BREACH OF TRUST'

Allegations of 'cheating' and 'criminal breach of trust' are often used interchangeably. The Supreme Court has clarified that 'cheating' and 'criminal breach of trust' are antithetical to each other and cannot co-exist.⁸ Prosecution and the magistrates have been guided to be careful when recording the charge of 'cheating' or 'criminal breach of trust'.

The distinction between 'cheating' and 'criminal breach of trust' can be identified as follows: 'cheating' requires deception either by a false or misleading representation to a person leading such person to deliver property to the accused. Whereas 'criminal breach of trust' requires the accused who is in legal possession of property of another to dishonestly misappropriate such property for use or benefit contrary to the purpose for which such property was entrusted. *Mens rea* is an essential element in both cases. In a case of cheating, dishonest intention should exist from the very beginning⁹ of the

⁶ *Delhi Race Club*, paragraph 13.

⁷ *Delhi Race Club*, paragraph 28.

⁸ *Delhi Race Club*, paragraph 43.

⁹ *Delhi Race Club*, paragraph 26.

relationship, while in the case of criminal breach of trust, dishonest intention comes into existence in the course of the relationship.

VICARIOUS LIABILITY OF OFFICE BEARERS OF A COMPANY IN CRIMINAL MATTERS

Often, office bearers (including directors) of a company are included as accused in a criminal complaint against the company. In *Delhi Race Club*, the Supreme Court has confirmed that the Indian Penal Code, 1860 does not contain any provision for attaching vicarious (indirect) liability to office bearers of a company. Office bearers can be included as accused in a complaint only if direct allegations are leveled against them. A complainant must demonstrate that he has been deceived by the specific acts or omissions by the relevant officer bearers before such office bearers can be identified as an accused along with the company. Vicarious liability can be attributed to officer bearers of the company only in cases where the applicable statute / law provides for it.¹⁰

MAINTAINABILITY OF A PETITION FOR QUASHING OF SUMMONS

In *Delhi Race Club*, the Supreme Court once again recognized the right of an accused to approach the High Courts for quashing of the order issuing summons against him.¹¹ The Supreme Court observed that, in the case of a private complaint, it is the duty of the High Court to examine whether the magistrate had 'applied his mind' 'to form an opinion' as to the 'existence of sufficient ground(s) to proceed' against the petitioning accused.¹² 'Ground(s) for proceeding further' is a prerequisite without which a magistrate does not have the power to issue summons to an accused.

Summons are liable to be quashed in cases where: (a) no case is made out against the accused in the complaint, (b) the complaint does not disclose the essential ingredients of the alleged offence; (c) the complaint is patently absurd and inherently improbable, (d) the complaint suffers from legal defects or lacks requisite approval from the competent authority, and (e) the magistrate has exercised discretion arbitrarily or capriciously.

¹⁰ *Delhi Race Club*, paragraph 14.

¹¹ *Delhi Race Club*, paragraph 22.

¹² *Delhi Race Club*, paragraph 22.

CLOSING REMARKS

While the law in relation to issuance of summons by Magistrates dealing with a private complaint has been well settled, the Supreme Court in Delhi Race Club has taken the opportunity to reiterate the ingredients of the offences of 'criminal breach of trust' and 'cheating' and the scope of 'vicarious liability' of office bearers of companies for such offences. The Supreme Court has reminded the police and the magistrate courts to be mindful of the distinction between the two offences. The decision in Delhi Race Club has the potential to provide respite to several litigants who may be facing criminal prosecution in matters which should properly be pursued strictly as civil law claims for money or injunctive relief.

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