

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Delivered on: 28th July, 2015

+ CRL.M.C. No.1222/2011

ANIL KUMAR & ORS. Petitioners

Represented by: Mr. Ajay Kohli and
Ms. Bhumika Kapoor, Advocate

Versus

STATE & ANR. Respondents

Represented by: Mr. Neeraj K. Singh,
Additional Public Prosecutor for the
State with SI Mahendra Koli, P.S. Subzi
Mandi.

Mr. Vikas Pahwa, Senior Advocate with
Mr. L.S. Bindra, Advocate for
Respondent No. 2

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J.

CRL.M.C. No.1222/2011

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners have sought setting aside of the impugned order dated 22.05.2010 passed in Complaint Case No.854/T, titled '*Ashwani Kumar Vs. Anil Kumar & Ors.*', falls under jurisdiction of Police Station Subji Mandi, New Delhi.

2. Further sought directions thereby quashing of the complaint case noted above pending before the Trial Court.

3. Briefly stated, respondent No. 2 is the brother of the petitioner No.1 and petitioner No.2 is son of petitioner No. 1. The present petition has been filed by stating that the respondent No.2 had filed a criminal complaint under Sections 323/341/506 of the Indian Penal Code, 1860 (for short 'IPC') against the petitioners, that earlier the respondent No.2 had filed a criminal complaint bearing CC No.382/3 (94/1) under Sections 323/341/427/452/506 read with Section 34 IPC against the petitioners and the daughter of petitioner No.1, which is pending before the learned Metropolitan Magistrate. The respondent No.2/complainant alleged that on 01.10.2007 and thereafter on 03.10.2007 when the respondent No.2 came to attend the case in the court of Sh. Vinay Singhal, Metropolitan Magistrate, Delhi, the petitioners had extended threats, petitioner No.2 hit the respondent No.2 on the backside of his neck and the petitioner No.1 gave a punch in his stomach.

4. Mr. Ajay Kohli, learned counsel appearing on behalf of the petitioners submitted that earlier CC No.382/3 (94/1), filed by the respondent No.2 against the petitioners and daughter of the petitioner No.1 in the afore-noted court has been quashed by this Court vide order dated 15.09.2009 passed in Crl. M.C. No.3413/2007, titled '*Anil Kumar & Ors. Vs. State & Anr.*'. The relevant observations recorded by this Court are as under:-

“.....however, taking into consideration the facts of this case, the number of proceedings initiated by the Respondent against the Petitioner though unsuccessfully and the relationship between the parties, I am of the view that the Respondent has set the judicial process into motion in order to harass the Petitioner and to unleash vendetta against him. The continuance of frivolous proceedings would be vexatious and oppressive towards the Petitioner. Accordingly, no useful purpose is going to serve by keeping the proceedings alive. Consequently, ...complaint case No.382/3 (94/1).....is quashed.”

5. Learned counsel further submitted that the respondent No.2/complainant examined himself as well as one Mr. Gurjit Singh, Advocate, as CW-1 and CW-2 respectively, stated to be passing through the Corridor outside the Court of Sh.Vinay Singhal, Metropolitan Magistrate, Delhi, on the date of alleged incident. However, the respondent No.2 withheld from the said Court, the factum of quashing of CC No.382/3 (94/1) by this Court vide its order dated 15.09.2009. Furthermore, son of respondent No.2, namely, Sanjay Shah, is an Advocate himself and CW-2 Gurjit Singh, Advocate alleged to be passing by at the relevant time, is none other than his colleague being working in the same office at 117, Lawyers Chamber, Western Wing, Tis Hazari Courts, Delhi. Copies of the computer generated information showing the identical chamber address, as noted above, have been annexed to the petition as Annexure-D (Colly).

6. Learned counsel further submitted that while passing the impugned order dated 22.05.2010, though the learned Trial Court observed that there was no MLC on record to satisfy about hurt/injury alleged to have been caused to the respondent No.2/complainant, however, summoned the petitioners without specifying under which provisions of IPC.

7. Learned counsel submitted that criminal proceedings, as initiated by the respondent No.2, are manifestly attended by *mala fides*, instituted maliciously and with an ulterior motive for wrecking vengeance on the petitioners with a view to spite them due to private and personal grudges and coerce them to succumb to his illegal demands for money on his alleged claims of share in the property. It is submitted that initiation of present criminal proceedings is yet another attempt in the series of such prior attempts, which have proved futile.

8. It is pertinent to mention here that respondent No.2, during the lifetime of Late Sh. Girdhari Lal, i.e., father of petitioner No.1 and respondent No.2, had entered into a settlement/compromise with him and had separated from the family and had taken substantial assets, i.e., money and jewellery (gold) against his claims in the property. The family at that point of time was living at Jalandhar. Thus, the respondent No.2 had separated from the family and shifted to Delhi and since then has been living in Delhi.

9. Learned counsel for the petitioners submitted that Late Sh. Girdhari Lal, during his lifetime, had executed a Will dated

03.09.1993. Unfortunately, he had expired on 11.11.1996. Thereafter, mother of the petitioner No.1 and respondent No.2, was being taken care of by the petitioner No.1 at Jalandhar. He submitted that the respondent No.2 has always been trying to implicate his mother, petitioner No.1 and his family members by filing false complaints, one after the other, merely with a view to compel them to succumb to his pressure and pay him monetary considerations, when in fact, respondent No.2 had already separated from the family after satisfying all his claims and that too during lifetime of the father.

10. Learned counsel submitted that having failed in his earlier endeavours in implicating the petitioner No. 1 and his family members in false cases, the respondent No.2 has filed the present criminal complaint on false allegations which is yet another attempt to blackmail and harass the petitioners. He submitted that the allegations are so self contradictory and patently absurd that no person can reach a just conclusion that there is sufficient ground to proceed against the petitioners.

11. Learned counsel further submitted that while passing the impugned order dated 22.05.2010, the learned Trial Court has not appreciated that summoning of an accused in a criminal case is a serious matter and thus, the criminal law cannot be set into motion as a matter of course. In this regard, the learned Trial Court has acted in a mechanical manner and in contradiction to the law as laid down by the Supreme Court of India in the case of ***Pepsi Foods***

Ltd.& Anr. Vs. Special Judicial Magistrate, 1998 (5) SCC 749,

wherein the Apex Court held as under:-

“Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

12. Learned counsel further submitted that the learned Trial Court merely acted as a silent spectator and obvious questions qua the status of CC No.382/3 (94/1), stated to be pending in the Court of Sh. Vinay Singhal, Metropolitan Magistrate, Delhi and whether any such complaint was made to the said Court, if put by the Trial Court, would have revealed the truth about the factum of quashing of said criminal complaint by this Court vide its order dated 15.09.2009 passed in CrI. M.C. No. 3413/2007.

13. Learned counsel submitted that the present case is misuse of judicial process and due to vendetta, therefore, the impugned order dated 22.05.2010 passed by the Trial Court may be set aside.

14. To strengthen his arguments, learned counsel for the petitioners has relied upon a case of ***State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors. JT 1990 (4) SC 650***, wherein the Supreme Court has held as under:-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the

accused and with a view to spite him due to private and personal grudge.”

15. On the other hand, Mr. Vikas Pahwa, learned Senior Counsel appearing on behalf of the respondent No.2/complainant submitted that after taking into due consideration and applying his judicious mind on the pre-summoning evidence recorded before the learned Trial Court, it was correctly opined that the petitioners have committed cognizable offences. Since pre-summoning evidence as recorded in the complaint case in question duly constitutes a *prima facie* case and also discloses commission of cognizable offences against the petitioners, therefore, the order dated 22.05.2010 is proper and legal.

16. Learned senior counsel further submitted that the contradictions and discrepancies as mentioned by the petitioners in the present petition can only be controverted or uncontroverted during trial and, therefore, threadbare discussion regarding the same in the present petition at the initial stage is superfluous and uncalled for. Further submitted that the learned Trial Court was well within its jurisdiction to pass the order dated 22.05.2010 as the complaint case filed by the respondent No.2. The pre-summoning evidence recorded before the learned Trial Court *prima facie* constitutes cognizable offences against the petitioners and to believe or disbelieve the same without testifying them during the course of trial would be against the criminal jurisprudence.

17. Learned senior counsel further submitted that the petitioner No.1 had settled the business accounts with his father and shifted to Delhi, however, the said business settlement was not with the respondent No.2. Father of the respondent No.2 as well as petitioner No.1, during his lifetime, made a Will dated 08.11.1996, just before his death. The respondent No.2 did not claim the property of the father till date, however, his son, at the age of 19 years, filed a suit against the legal heirs of the property in the year 1999 under the pressure of Meena Shah.

18. In support of his submissions, learned senior counsel for the respondent No.2 while relying upon the case of ***Bhajan Lal*** (*supra*), submitted that the said case is of no help to the petitioners. He submitted that there is no abuse of process of law, complaint case has not been filed due to vendetta, however, actual incident has taken place and pursuant thereto respondent No.2 informed the Police Post and filed the complaint case. Respondent No.2 had examined himself as CW1 and Advocate Gurjit Singh as CW2, thus, after seeing the testimonies of both the complainant witnesses and applying its judicious mind, the learned Trial Court has rightly issued the summoning orders against the petitioners.

19. Learned senior counsel submitted that if the earlier complaint case filed by the respondent No.2 was dismissed by this Court that does not mean that the present case has been instituted falsely against the petitioners. Therefore, the present petition deserves to be dismissed.

20. I have heard the learned counsel for the parties.

21. On the date of the alleged incident, the petitioners and respondent No. 2 had come to attend the hearing in CC No. 382/3 (94/1) as noted above, which was pending before the Court of Sh. Vinay Singhal, MM, Delhi. If the incident took place outside the said Court, in such eventuality, the respondent would have brought the matter at least to the notice of above-named Magistrate. But this fact has nowhere been mentioned in the complaint of respondent No. 2.

22. It is an admitted fact that earlier C.C. No. 382/3 (94/1) filed by the respondent No. 2 against the petitioners and daughter of petitioner No. 1 was quashed by this Court vide order dated 15.09.2009 passed in Crl. M.C. No. 3413/2007, whereby observed that the number of proceedings initiated by the respondent against the petitioners though unsuccessfully, the respondent has set the judicial process into motion in order to harass the petitioners and to unleash vendetta against them. The continuance of frivolous proceedings would be vexatious and oppressive towards the petitioners.

23. It is pertinent to note that son of respondent No. 2, namely, Sanjay Shah is an Advocate himself and CW-2 Gurjit Singh, Advocate alleged to be passing by at the relevant time, is none other than his colleague being working in the same office at 117, Lawyers Chamber, Western Wing, Tis Hazari Courts, Delhi. While passing the impugned order dated 22.05.2010, it was opined that there was

no MLC on record to satisfy about hurt / injury caused to the complainant by the accused persons. In such eventuality, Id. Trial Judge ought to have dismissed the complaint of respondent No.2. However, summoned the petitioners without specifying under which provisions of law.

24. It is not in dispute that the cases are pending in different Courts between the petitioners and respondent No. 2. The criminal proceedings as initiated by respondent No. 2, are manifestly attended by *mala fides*, instituted maliciously and with an ulterior motive for wrecking vengeance on the petitioners with a view to spite them due to private and personal grudges and coerce them to succumb to his illegal demands for money on his alleged claims of share in the property. The initiation of present criminal proceedings is yet another attempt in series of such prior attempts, which have proved futile.

25. Be that as it may, Id. Trial Court has opined that there was no MLC on record to satisfy about hurt and injury caused to the respondent No.2 by petitioners. Despite, directions for summoning of the petitioners were issued. Whereas, while issuing the summoning order, the Trial Court is duty bound to ascertain the offence committed by the accused and mention the provisions under which alleged offence has occurred and thereafter issue summoning order in accordance with the provisions of the Act.

26. In the present case, Id. Judge opined that there were sufficient grounds to summon the petitioners, but failed to mention for which

offence and under which provision of the Act, summons were issued. Thus, the order passed by Id. Trial Court cannot be sustained in law and deserves to be set aside.

27. In the case of ***Pepsi Foods Ltd. (Supra)***, the Hon'ble Apex Court held that the summoning of accused in a criminal case is a serious matter. The Court has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and whether that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. He has to carefully scrutinise the evidence brought on record.

28. In the case of ***Sunil Bharti Mittal Vs. Central Bureau of Investigation***' decided on 09.01.2015, the Full Bench of the Supreme Court held as under:-

“46. 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 facie 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.

47. However, the words “sufficient grounds for proceeding” appearing in the Section 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 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.”

29. Keeping in view the facts recorded above, I am of the considered opinion that the present case is covered under guideline No. 7 issued in the case of **Ch.Bhajan Lal & Ors.** (*Supra*) whereby held that the proceedings deserve to be quashed where the criminal proceeding is manifestly attended with *mala fide* and where the proceeding is maliciously instituted with ulterior motive for wrecking vengeance on the accused with a view to spite them due to private and personal grudge.

30. Taking into consideration the fact that while coming to the conclusion that there is *prima facie* case against the petitioners, a proper satisfaction should be duly recorded by the learned MM on the basis of material on record. No such exercise is done. In this scenario, having regard to the aforesaid aspects coupled with the legal position explained above, the impugned order dated 20.05.2010 cannot sustain in its present form insofar as it relates to summoning the petitioners as accused persons.

31. In view of the above discussion, I set aside the order dated 20.05.2010 passed in Complaint Case No. 854/T, titled '*Ashwani Kumar Vs. Anil Kumar & Ors.*' and also quash the complaint case noted above.

32. In view of above, the present petition is allowed with no order as to costs.

Crl. M.A. No. 4467/2011 (for stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

JULY 28, 2015
sb/jg