

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-15725-2012 (O&M)  
Date of decision: 01.09.2015

**Baljinder Singh**

... Petitioner

**Vs.**

**Malkit Singh**

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present: Mr. Arihant Jain, Advocate  
for the petitioner.

Mr. Anil Kumar Garg, Advocate  
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

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**RAMESHWAR SINGH MALIK, J.**

Feeling aggrieved against the impugned summoning order dated 25.03.2010 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Malerkotla and the revisional order dated 07.04.2012 passed by the learned Additional Sessions Judge, Sangrur in complaint No.44 dated 04.06.2009, titled as Malkit Singh Vs. Jang Singh and another, petitioner has approached this Court, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), for quashing the impugned orders.

Notice of motion was issued and further proceedings before the learned trial Court, qua the petitioner, were stayed. Reply on behalf of the

respondent-complainant was filed.

Learned counsel for the petitioner submits that petitioner was only performing his official duties as Patwari, while preparing and issuing different revenue documents, including the Jamabandi (Annexure P-7). He refers to Column No.11 of Jamabandi (Annexure P-7) for the year 1999-2000 to contend that a specific entry was recorded vide rapat No.5 dated 05.08.1996 that the land was under mortgage with the bank, at the instance of Jang Singh-co-accused of the present petitioner. Learned counsel for the petitioner would contend that in spite of the abovesaid entry of mortgage in the Jamabandi, complainant purchased the land from Jang Singh, who was none else but his own uncle. Petitioner performed only his official duty and he was not the beneficiary. Learned counsel for the petitioner concluded by submitting that the complainant filed a civil suit for declaration vide Annexure P-4 against Jang Singh and the bank. He did not implead the petitioner as party-respondent, whereas he has falsely implicated the present petitioner in the complaint. Since the petitioner had no role to play except that he performed his official duty, the learned Courts below fell in serious error of law, while passing the impugned summoning order, as well as the revisional order which are liable to be set aside. He prays for quashing the impugned orders, by allowing the present petition.

On the other hand, learned counsel for the complainant submits that petitioner has committed the offence in question. He was very much responsible for the commission of offence in connivance with Jang Singh. He further submits that present petition is not maintainable in the present form. In support of his contentions, learned counsel for the complainant-respondent

places reliance on judgment of the Hon'ble Supreme Court in **Deepti @ Arati Rai Vs. Akhil Rai and others, 1995 (5) SCC 751, Om Kr. Dhankar Vs. State of Haryana and anr., 2012 (2) RCR (Crl.) 209 and Dharampal Vs. Ramshri, 1993 (1) SCC 435.**

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, present one has been found to be a fit case for interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

It is a matter of record that petitioner was posted as Patwari and he was performing his official duties, while preparing different revenue documents. The land purchased by the complainant from his real uncle namely Jang Singh, was under mortgage with the bank, as per rapat No.5 dated 05.08.1996, recorded as such by the petitioner in Column No.11 of the Jamabandi (Annexure P-7). If, in spite of the abovesaid specific entry regarding mortgage in the relevant revenue record, complainant purchased the land from Jang Singh, co-accused of the petitioner, he violated the relevant principle of law i.e. caveat emptor. Once the complainant himself was negligent, petitioner could not have been made accused in the complaint. Having said that, this Court feels no hesitation to conclude that since the learned Courts below failed to appreciate this crucial aspect of the matter, while passing their respective impugned orders, the same cannot be sustained.

It is also not in dispute that the complainant has already filed a

civil suit for declaration vide Annexure P-4, wherein he has impleaded his vendor namely Jang Singh as defendant No.1 and Oriental Bank of Commerce as defendant No.2. He did not implead the petitioner as party defendant in his civil suit, for the reasons best known to him, in spite of the fact that civil suit was also based on similar set of allegations. In such a situation, it can be safely concluded that the learned Courts below proceeded on a misconceived approach, while passing their respective impugned orders and the same cannot be sustained, for this reason also.

Learned counsel for the petitioner was found fully justified in contending that petitioner was not the beneficiary, because of which there was no occasion for the petitioner to get himself involved in the activity alleged against him, that too at the risk of his service career. In view of the entry of mortgage, recorded in the relevant Jamabandi (Annexure P-7), statement dated 17.12.2009 of the Naib Tehsildar reproduced by the respondent-complainant in his reply at page 67 of the paper book, would be of no consequence, it being contrary to the official record. Thus, the impugned orders cannot be sustained, for this reason as well.

Coming to the judgments relied upon by learned counsel for the respondent-complainant, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none has been found of any help to the respondent, being distinguishable on facts. It is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one additional fact or circumstance can make a world of difference, as held by the Hon'ble Supreme Court in

**Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

A bare combined reading of the impugned summoning order, as well as the impugned revisional order passed by the learned Courts below, would show that both the learned Courts have failed to appreciate the abovesaid relevant aspects of the matter, while passing their respective impugned orders, which have resulted in miscarriage of justice, hence not sustainable in law. It is so said because the learned Courts below have failed to take into consideration the law laid down by the Hon'ble Supreme Court in **M/s Pepsi Foods Ltd. Vs. Special Judicial Magistrate, 1998 (5) BCR 426** as well as the judgments of this Court in **Ram Parkash Vs. State of Haryana, 2000 (2) RCR (CrI.) 732** and **Gian Parkash Vs. State of Haryana reported as 2008 (3) RCR (CrI.) 31**. Since the impugned orders have been found running counter to the law laid down by the Hon'ble Supreme Court in **M/s Pepsi Foods Ltd's** case (supra) as well as by this Court, in the cases referred to hereinabove, the impugned orders cannot be sustained.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Rishipal Singh Vs. State of U.P. and another, 2014 (7) SCC 215**. The relevant observations made by the Hon'ble Supreme Court in paras 10 to 12 of its judgment in **Rishipal Singh's** case (supra), which can be gainfully followed in the present case, read as under: -

*“Before we deal with the respective contentions advanced on either side, we deem it appropriate to have thorough look at*

*Section 482 Cr.P.C., which reads:*

*“Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders of this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice”.*

*A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C.*

*This Court in **Medchl Chemicals & Pharma (P) Ltd. v Biological E. Ltd and Others, 2002 (2) RCR (Criminal) 122 : 2000 (3) SCC 269**, has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from that judgement, which reads:*

*“Exercise of jurisdiction under inherent power as*

*envisaged in Section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution with the lodgement of First Information Report. The ball is set to roll and thenceforth the law takes it's own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and it's undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount”.*

*This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In **State of Haryana v. Bhajan Lal**, 1191 (1) RCR (Criminal) 383: 1992 Supp(1) SCC 335, this*

*Court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1) **Central Bureau of Investigation v. Duncans Agro Industries Ltd., 1996 (3) RCR (Criminal) 60 : 1996 (5) SCC 592**; (2) **Rajesh Bajaj v. State NCT of Delhi, 1999 (2) RCR (Criminal) 160 : 1999 (3) SCC 259** and; (3) **Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque & Anr, 2004 (4) RCR (Criminal) 937 : (2005) 1 SCC 122**. This Court in *Zandu Pharmaceuticals Ltd.*, observed that: “The power under Section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under Section 482 of the Code must be exercised and proceedings must be quashed”. Also see **Om Prakash and Ors. V. State of Jharkhand, 2012 (4) RCR (Criminal) 662 : 2012 (5) Recent Apex Judgments (R.A.J.) 127 : 2012 (12) SCC 72**. What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint *prima facie* establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results*

*in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.”*

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in Rishipal Singh's case (supra), it is unhesitatingly held that when the uncontroverted allegations levelled in the complaint against the petitioner are examined, no offence, whatsoever, is made out against him. Thus, continuation of the criminal proceedings against the petitioner arising from the impugned orders, would amount to abuse of process of law and shall result in miscarriage of justice. Under these circumstances, present one is the fit case for invoking the inherent jurisdiction under Section 482 Cr.P.C. at the hands of this Court.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be accepted. Consequently, the summoning order dated 25.03.2010 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Malerkotla and the revisional order dated 07.04.2012 passed by the learned Additional Sessions Judge, Sangrur in the complaint No.44 dated 04.06.2009, titled as Malkit Singh Vs. Jang Singh and another

and the consequential criminal proceedings arising therefrom are hereby quashed, however, only qua the petitioner.

Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.

**[ RAMESHWAR SINGH MALIK ]**  
**JUDGE**

01.09.2015  
*vishnu*