

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-19965-2013
Date of decision:9.7.2015**

Jagbir Singh Narwal

...Petitioner

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.H.S.Gill, Sr. Advocate with
Mr.Vivek Goel, Advocate for the petitioner.

Mr.Sajjan Singh Malik, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of complaint No. 44 dated 25.2.2008 (Annexure P-2) and impugned summoning order dated 22.5.2013 (Annexure P-9) as well as further proceedings arising therefrom.

Notice of motion was issued and further proceedings before the learned trial Court were stayed.

Respondent filed his reply by way of affidavit dated 15.12.2013. Vide order dated 11.12.2014 passed by this Court, petition was admitted and interim order was ordered to continue. That is how, this Court is seized of the matter.

Learned senior counsel for the petitioner submits that even if the allegations levelled in the impugned complaint (Annexure P-2) are taken to be true on their face value, still no offence, whatsoever, is made out

against the petitioner. The impugned complaint was based on malafide intention of respondent-complainant. Kabuliyatnama (Family Settlement) (Annexure P-1) was drafted by the petitioner on the joint request made by the parties-beneficiaries of the family settlement, including the complainant-respondent, who is also a signatory to the family settlement (Annexure P-1).

Learned senior counsel for the petitioner would next contend that based on the above-said family settlement (Annexure P-1), sons of the complainant-respondent (Om Parkash) filed a suit for declaration. It was the respondent-complainant who cited the petitioner as witness in the above-said suit for declaration. While appearing as PW-5, petitioner made the statement before the learned Civil Judge (Junior Division), Rohtak, on 18.10.2001 (Annexure P-3). The suit was decreed and the complainant-respondent got his share in the family property, regarding which dispute was going on between the parties.

Referring to Rule 13 of the Bar Council of India Rules, 1965 ('BCI Rules' for short), learned senior counsel for the petitioner submits that the allegations levelled by the complainant, in the impugned complaint, were not only factually incorrect, frivolous, malicious but the same were absurd as well. Since the petitioner was having about 47 years of practice to his credit, the allegation against him levelled in the impugned complaint does not appeal to reason, in view of the provisions of law contained in BCI Rules. He further submits that the offence under Sections 406 and 420 IPC were ante thesis to each other. In this regard, he places reliance on two judgments of this court in **Jalpa Parshad Aggarwal v. State of Haryana and another, 1987 (2) RCR (CrI.) 427** and **Pardeep Kumar v. State of Haryana, 1996 (2) RCR (CrI.) 791**.

Impugning the summoning order (Annexure P-9), learned senior counsel would submit that the learned Judicial Magistrate 1st Class, Rohtak fell in serious error while altogether ignoring the true factual aspect of the matter as well as the principles of law applicable thereto. Report sought under Section 202 Cr.P.C. was also not appreciated by the learned Magistrate because of which the impugned summoning order was not sustainable in law. He also refers to the orders passed by the Bar Council, whereby complaint filed by the present complainant-respondent, on the same set of allegations as levelled in the impugned complaint (Annexure P-2), was dismissed for non-prosecution. He prays for quashing the impugned complaint (Annexure P-2), impugned summoning order (Annexure P-9) as well as further proceedings arising therefrom, by allowing the present petition.

On the other hand, learned counsel for the respondent submits that the allegations levelled against the petitioner, in the impugned complaint were factually correct and the summoning order was rightly issued against him, by the learned Magistrate which deserves to be upheld. He further submits that although the petitioner has violated the provisions of Rule 13 of the BCI Rules, yet a complaint of the respondent was dismissed because the petitioner exercised his undue influence. Placing reliance on the judgments in **Gorige Pentaiah v. State of Andhra Pradesh and others, 2008(4) RCR (CrI.) 171** and **Gurdeep Kaur v. Balbir Singh and others, 2005(2) RCR (CrI.) 205**, learned counsel for the respondent vehemently contended that no case has been made out in favour of the petitioner, for invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. The inherent powers under Section 482 Cr.P.C. may not be

exercised by this Court, to stifle the legitimate prosecution and the complainant may not be allowed to prosecute the petitioner, because there was sufficient evidence with the complainant to substantiate his allegations, levelled in the impugned complaint. Learned counsel for the respondent also refers to the complaint (Annexure R-2), to contend that the arguments raised by the learned senior counsel were misplaced. He prays for dismissal of the present petition.

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 rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed hereinabove, instant one has been found to be a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

A combined reading of the impugned complaint (Annexure P-2), Kabuliyatnama (Family Settlement) Annexure P-1, statement of the petitioner before the civil court as PW-5 in the suit for declaration filed by sons of the complainant (Annexure P-3), police report sought by the learned Magistrate under Section 202 Cr.P.C. (Annexure P-5), different orders passed by the competent authority of the Bar Council, judgment dated 22.7.2013 (Annexure P-10) passed by the learned Civil Judge (Junior Division), Rohtak, decreeing the suit of the plaintiffs-sons of the complainant, on the basis of family settlement (Annexure P-1) and the impugned summoning order (Annexure P-9), leaves no room for doubt that the impugned complaint filed by the respondent-complainant was based on

his malafide intention. He launched malicious prosecution with an ulterior motive for wreaking vengeance on the petitioner because of his personal grudge. Smt. Shakuntla Devi, first wife of the complainant had a matrimonial dispute with the respondent-complainant which was finally decided against the complainant and the petitioner was counsel for Smt. Shakuntala Devi. This was the reason that complainant-Om Parkash was having a personal grudge against the petitioner. It has been so recorded by the concerned police officer in his self-contained report (Annexure P-5) which was submitted to the learned Magistrate under Section 202 Cr.P.C.

Another reason with the complainant for filing false and frivolous complaint against the petitioner was that he wanted to grab the property of his sister-in-law (Bhabi) Smt. Attar Kaur. Elder brother of the complainant and husband of Smt. Attar Kaur had died leaving behind only five daughters and no son. Since the petitioner was aware about this dispute and relationship of the parties, he drafted Kabuliyatnama (family settlement), of course, having been requested by both the parties, so as to enable them for amicable settlement of their dispute. Petitioner committed no sin in doing so. Further, it was the complainant himself who cited the petitioner as his own witness, in the civil suit filed by his sons namely Vijaynt and Sumit against Smt. Attar Kaur, on the basis of same very family settlement (Annexure P-1). Petitioner appeared as PW-5 before the learned Civil Judge (Junior Division), Rohtak in Civil Suit No. 304 of 1.6.2005/21.3.2009 (suit for declaration). This was decreed in favour of sons of respondent-complainant. This family settlement was signed by the complainant as well and original thereof was handed over by the petitioner to the complainant. Thereafter, original family settlement was produced by

the complainant himself before Sh. Hukam Chand Khokhar, Advocate (Notary Public) for the purpose of attestation of photocopies of the same.

One more relevant circumstance that goes against the complainant-respondent and in favour of the petitioner, is that the complaint moved against the petitioner, by the complainant before the Bar Council, had also been dismissed. When a pointed question was put to the learned counsel for the respondent in this regard, he had no answer and rightly so, it being a matter of record.

Further, matter was enquired into by the police authorities twice over. Firstly, when the complainant approached the police of Police Station, Civil Lines, Rohtak, as pointed out by himself in para 22 of the impugned complaint and secondly in compliance of the order dated 17.12.2011 passed by the learned Additional Chief Judicial Magistrate, Rohtak (Annexure P-4), directing the SHO, Police Station, Civil Lines, Rohtak, for investigation and submission of report under Section 202 Cr.P.C. All the allegations levelled by the complainant against the petitioner were found baseless.

Irresistible conclusion of the foregoing discussion is that it was a frivolous litigation launched by the complainant against the petitioner, because the complainant was having a personal grudge against the petitioner. When the allegations levelled by the complainant in the impugned complaint are examined and considered in the above-said factual background, it can be safely concluded that even if the allegations levelled in the impugned complaint are taken to be true on their face value, no offence of any kind whatsoever, is found to be made out against the petitioner.

Coming to the impugned summoning order, the same has been found the result of total non-application of mind. A self-contained police report (Annexure P-5) was not properly appreciated by the learned Magistrate before passing the summoning order. Passing a summoning order, directing the accused to face criminal trial, is a serious issue and cannot be taken lightly by the learned Magistrate. It is so said, because an innocent citizen, as in the present case, must not be forced to face the agony of criminal trial, particularly when the allegations levelled in the complaint are based on malafide intention of the complainant. Such summoning order would certainly cause serious miscarriage of justice, as has been done in the instant case.

Learned Magistrate has proceeded on a wholly misconceived approach, while issuing the impugned summoning order without realizing the serious consequences thereof, because the present one was not a fit case for issuing the impugned summoning order. Had the learned Magistrate considered and appreciated the above-said factual background of the case as well as the relevant and settled principles of law on the issue, the miscarriage of justice that has taken place in the present case, could have been avoided.

Learned senior counsel for the petitioner has rightly contended that the offence under Sections 406 IPC is ante-thesis of the offence under Section 420 IPC. It was so held by this Court in **Jalpa Parshad Aggarwal's** case (supra) and the relevant observations made in para 3 of the judgment, which can be gainfully followed in the present case, read as under:-

“At the very outset it may be mentioned that this Court held in Iqbal Singh Randhawa v. Doctor Satpaul Goyal, 1977 C.L.R. (Pb. & Har.) 134, that an offence under Section 406, Indian

Penal Code, is an antithesis of offence under section 420 Indian Penal Code. In a case of criminal misappropriation the property is voluntarily kept in the custody of an accused whereas in a case of cheating the accused, by adopting deceitful means, induces the complainant to part with the property. Thus, an accused cannot, be tried for these two offence simultaneously, Either his committed an offence under Section 406, Indian Penal Code or under Section 420, Indian Penal Code.”

Similar, view was taken by this Court in **Pardeep Kumar's** case (supra).

So far as the judgments relied upon by the learned counsel for the respondent are concerned, there is no dispute about the law laid down therein. In fact, on close perusal of the cited judgments, it has been found that both the judgments clearly go in favour of the petitioner and against the respondent. The present case would fall under more than one guidelines laid down by the Hon'ble Supreme Court, in its celebrated judgment in **State of Haryana and others v. Bhajan Lal and others, AIR 1992 SC 604**, on the issue of quashing of criminal proceedings.

When the allegations levelled by the complainant in the impugned complaint are tested in view of Rule 13 of the BCI Rules, reproduced in para 5 of the petition, the unassailable conclusion would be that the allegations are so absurd, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. In such a situation, it is unhesitatingly held that if the impugned criminal proceedings are allowed to continue against the petitioner, the same would amount to glaring abuse of process of law and would also result in further miscarriage of justice.

Even if the allegations levelled in the impugned complaint are

taken as true at their face value and accepted in their entirety, they still do not constitute the offence alleged against the petitioner. Thus, it is a fit case wherein the petitioner has been found entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. Further, once such glaring misuse of process of law has been brought to the notice of this Court, it becomes imperative and obligatory for this Court as well, to invoke its inherent powers under Section 482 Cr.P.C. to quash the impugned complaint, summoning order and the subsequent proceedings arising therefrom, so as to prevent the abuse of process of law and to secure the ends of justice. This is what has been held by the Hon'ble Supreme Court in **Gorige Pentaiah's case (supra)**.

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 the present petition deserves to be allowed. Consequently, the impugned complaint No. 44 dated 25.2.2008 (Annexure P-2), impugned summoning order dated 22.5.2013 (Annexure P-9) and further proceedings arising therefrom, are quashed.

Resultantly, with the above-said observations made, the instant petition stands allowed, however, with no order as to costs.

9.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE