

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM NO. M-2138 of 2014
DECIDED ON : March 19, 2015

Hans Raj

...Petitioner

versus

Ashok Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Vikram Saini, Advocate
for the petitioner.

None for the respondent.

JASPAL SINGH, J. (ORAL)

Instant petition has been preferred under Section 482 Cr.P.C. read with Sections 397/399 Cr.P.C for quashing complaint No. COMI-1395 dated September 06, 2010 (Annexure P-2) captioned as Ashok Kumar vs. Saroj Kumari & others as well as summoning order dated August 19, 2013 (Annexure P-1) passed by Judicial Magistrate Ist Classs, Rewari qua petitioner and subsequent, proceedings emanating therefrom.

2. It is an undisputed fact that on the basis of complaint lodged by Ashok Kumar-respondent No.1/complainant, petitioner along-with his co-accused were summoned to face trial under Sections 406 and 120-B IPC vide impugned order August 19, 2013 (Annexure P-1). There was some dispute with regard to purchase of policy by respondent No.1-complainant from Bajaj Aliance Insurance Company, Brass Market, Rewari through

Saroj wife of petitioner for a sum of ₹1,00,000/- and that on maturity, the said amount was withdrawn but not disbursed to petitioner. Allegations against the petitioner have been reflected in para 4 of complaint (Annexure P-2) which reads as under:

“That in this regard when I said to accused No. 3 Hans Raj s/o Hardwari Lal that Saroj Kumari has withdrawn my money with collusion and conspiracy Ashok Kumar, Tej Singh, Anil and J.P. Sharma than all of them threat me for dire consequences and told that if you report anywhere in this regard will be end of you and your family”.

3. A perusal of afore-said paragraph reveals that dispute with regard to withdrawal of an amount in collusion and conspiracy with Ashok Kumar, Tej Singh, Anil and J.P. Sharma if any was with Saroj Kumari and not the petitioner. The simple allegation against the present petitioner is that when the matter was brought to the notice of petitioner and others, they all extended threats to him. There is no allegation that any amount was entrusted to him, so as to attract Section 406 IPC or that he conspired with his wife and other co-accused for commission of any offence. It appears that impugned order has been passed mechanically.

4. It is pretty settled that by now, that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. It is not that complainant has to bring only one or two witnesses to support his allegation unfolded in the complaint to have the criminal law set into motion. The order of Magistrate summoning a person as an accused must reflect the application of his mind to the facts of the case as well as law applicable thereto. He is also required to

examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. He is not to act as a silent spectator at the time of recording of evidence before summoning a person as an accused. The Magistrate has to carefully scrutinise the evidence brought on record. But in the case in hand, it appears that allegations levelled against petitioner have not been thoroughly scrutinised while passing impugned order. In fact, from the impugned order, as well as contents of complaint it emerges that there is no prima-facie evidence to summon the petitioner that too for commission of offence under Section 406 and 120-B IPC.

5. Accordingly, instant petition is allowed and complaint (Annexure P-2) as well as impugned order dated August 19, 2013 (Annexure P-1) and subsequent, proceedings, if any emanating therefrom, are quashed qua petitioner by way of acceptance of instant petition.

March 19, 2015
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(JASPAL SINGH)
JUDGE