

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-24628 of 2013 (O&M)
Date of Decision: 13 May, 2015**

Bhupinder Singh and ors.

... Petitioners

Versus

State of Punjab and anr.

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.K. Aneja, Advocate
for the petitioners.

Mr. Varun Sharma, AAG, Punjab.

Mr. R.K. Singla, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

1. Prayer in this petition is for quashing of criminal complaint Annexure P-13 and summoning order dated 15.10.2012 passed by Sub Divisional Judicial Magistrate, Fazilka being illegal and contrary to law. Petitioners are police officials and alleged that husband of the complainant/respondent No.2 was a hard core criminal and was involved in number of cases under NDPS Act as well as in other offences. FIR No.37 dated 10.06.2010 was registered under Section 411 IPC in Police Station Arniwala District Ferozepur against Amarjit Singh, Angrej Singh and Harjinder Pal in respect of theft of motor-cycle. The investigation of said case was done by the police and it was alleged that Sukhdev Singh husband of the complainant/respondent No.2 was also involved. The police raided the house of Sukhdev Singh, where the respondent No.2 and her family member resisted policemen from apprehending Sukhdev Singh. Petitioners relied upon reports

Annexures P-6 to P10 prepared in that context. Zimni report prepared by the Investigating Officer of the case i.e petitioner No.1 is also attached as Annexure P-11 with the petition. Complainant alleged in the complaint that her husband was not present at home. Father-in-law of the complainant was present on 27.06.2010. The Police raided the house at about 11 AM. Brother of the complainant was also present in the house. The police officials used some filthy language and alleged that the complainant has made her husband to run away and ASI Bhupinder Singh started beating the complainant with danda, resulting in fracture in left arm. Harjinder Singh allegedly gave blow on the right knee. The complainant fell down. Father-in-law came to rescue, then Kuldeep Singh (Head Constable), Joginder Singh (Head Constable) and Major Singh PGH gave fists blow and said that the complainant is a wife of thief and threatened her to be taken to Police Station. On making noise neighbours namely Bachan Singh and Sarpanch Sucha Singh attracted to the spot. The room which was locked by the complainant was opened and they took away Rs.4500/- in cash lying in the trunk, one golden seal weighing one tola valuing 19,000/- tied in a black thread and police party went from there, while asking the complainant to produce Sukhdev Singh failing which they all will be kidnapped.

2. Complainant further alleged that she was hospitalized by Rupinder Singh and others in civil hospital Fazilka where she was medically examined and X-ray was done in respect of injuries on left arm, which was found to be fracture and was plasted thereafter. Complainant also relied upon medical evidence. Police came to the hospital for recording statement of the complainant and complainant narrated the whole story. The Head Constable allegedly took signature of the complainant on blank paper after ensuring her for registration of case.

3. Thereafter, police arrested husband of the complainant in case of theft of motorcycle. Complainant also alleged that despite her constant persuasion, FIR was not registered and thereafter criminal complaint under Sections 452, 457, 380, 325, 323, 504, 506, 148, 149 IPC was filed in the Court of Sub Divisional Judicial Magistrate, Fazilka on 19.07.2010.

4. The police recorded rapat No.222 in the context of statement of the injured/complainant in the hospital Annexure P-12. The contents of the DDR in pith and substance run contrary to the complaint on material particulars. Concluding part of the aforesaid rapat suggested that injuries received by the complainant were self inflicted injuries in order to save her husband from being arrested. Since the version of the complainant was not translated into FIR, therefore, no such cognizance can be taken on the issue.

5. The complainant produced preliminary evidence much less the medical evidence proving the receipt of injuries by her. On the basis of preliminary evidence led by the complainant, Sub Divisional Judicial Magistrate, Fazilka passed an order of summoning dated 15.10.2012 against the petitioners. It was also observed that the act done by the police officials/petitioners prima facie was not in discharge of their official duties and therefore requirement of sanction in terms of Section 197 IPC was not required. Since the stage of summoning requires availability of prima facie evidence for proceeding with the case. No meticulous examination of allegations and no loadable explanation on behalf of accused can be seen, therefore, Sub Divisional Judicial Magistrate, Fazilka passed the order, summoning the petitioners to face trial.

6. Learned counsel for the petitioners argued that summoning of accused in a complaint case is a serious matter and the order of summoning should be speaking one so as to cover necessary facts and must reflect

application of mind to the facts and the case law applicable thereto. Learned counsel further stressed upon the fact that bare perusal of the complaint does not spell out ingredients of the offences and therefore trial Court was not within its competence to take cognizance of issues. Learned counsel argued that the allegations are absurd and inherently improbable. The cognizance could not have been taken by the trial Court because the lodging of FIR itself manifestly visited with mala fide with a sole object to prevent the husband of the complainant from being arrested.

7. The petitioners being police officials were resisted in terms of performance of their public duty and therefore sanction in terms of Section 197 Cr.P.C was required before taking cognizance of the trial Court. Learned counsel further argued that in respect of occurrence in question rapat No.222 was recorded by the police on the basis of statement of the complainant on 28.06.2010 and therefore before passing order of summoning, trial Court could have resorted to report under Section 202 Cr.P.C. The provisions in terms of Section 202 and 210 Cr.P.C should have been complied with.

8. The prayer of the petitioners has been vehemently opposed by learned counsel for the respondent No.2 by arguing that at the stage of summoning, meticulous examination of the allegations is not required to be done. Prima facie evidence is to be seen for setting the case in motion. The complainant has alleged that the police raided the house in the odd hours at 11.00 PM. In the absence of husband of the complainant, the police party misbehaved with the complainant, her brother and father-in-law and took away valuables after breaking open the lock of the room. At the stage of summoning the prima facie allegations in the complaint supplemented by preliminary evidence are to be seen by assessing their prima facie value.

09. Though summoning in a complaint case is material stage, but the

complainant lead prima facie evidence to facilitate the trial Court to take cognizance in a lawful manner. Secondly, even though the petitioners are police officials, prima facie they were not expected to raid the house in odd hours that too indulging in misbehavior and taking away the valuable as per allegations of the complainant. Requirement of sanction in such a scenario would be debatable at the time of trial. At this stage prima facie, it cannot be observed that the petitioners were acting in discharge of their public duty. Raiding the house at 11 PM may or may not be a part of public duty in given circumstances, but indulging in misbehavior and looting of valuable articles cannot be treated to be part of official duty, therefore protection in terms of Section 197 Cr.P.C cannot be held to be applicable at this stage. Thirdly, on the statement of complainant, the police has recorded rapat No.222 dated 28.06.2010. According to complainant her signature was obtained by the aforesaid policemen on plain paper with an assurance to register a case. The said version has been allegedly twisted.

10. Learned counsel for the petitioners relied upon **2011(2) (Criminal) 571 Asmathunnisa VS. State of A.P. and anr. and 2010 (6) RCR (Criminal)25 (Delhi) Geetika Batra Vs. O.P. Batra and anr.** in support of his contention. There cannot be any dispute with the proposition involved in the aforesaid judgments. The facts involved in the present case are somewhat different and not covered with the aforesaid precedents. The order of summoning is based on medical evidence which was prima facie assessed by the trial Court at the time of taking cognizance. Equally applicable is the law that at the time of summoning, meticulous examination of allegations and probable defence cannot be taken into consideration. Only prima facie view of the matter is to be seen. The preliminary evidence before trial Court was sufficient to form an opinion for summoning the accused to face trial.

11. Be that as it may, the recording of alleged statement remained as DDR No.222 and could not be translated into FIR. Since there is no investigation by the police on the aforesaid aspect, therefore summoning of police report at the time of taking cognizance in a complaint case and passing of summoning order in terms of Section 202 and 204 Cr.P.C does not arise.

12. Consequently, at this stage it cannot be presumed that the complaint does not show any incriminating act on behalf of the petitioners. Therefore, complaint and the summoning order cannot be interfered at this stage. Consequently, the petition is found to be totally devoid of merits and is dismissed as such.

May 13, 2015
prince

(RAJ MOHAN SINGH)
JUDGE