

CRM-M-31070-2011 (O&M)

(1)

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

CRM-M-31070-2011 (O&M)

Date of Decision: February 19, 2015

Gurinderjit Singh and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Pawan Kumar,Sr.Advocate with
Mr.Anshuman Mandhar, and
Mr.Rozar Kumar Aggarwal, Advocates
for the petitioners.

Mr.K.S.Pannu, DAG, Punjab.

Ms.Isha Goyal, Advocate
for respondent No.2.

.....

Naresh Kumar Sanghi, J.

Challenge in this petition filed under Section 482,
Cr.P.C., is for quashing of complaint No.220, dated 09.12.2005
(Annexure P2) titled **Jaswinder Singh vs Gurinderjit Singh and
others**, pending before the learned Judicial Magistrate Ist Class,
Batala, and the summoning order, dated 01.08.2008 (Annexure
P3) vide which the petitioners were summoned to face trial for
the offences punishable under Sections 307, 427 and 452, IPC,

and Sections 25 and 27 of the Arms Act.

Learned Senior counsel contended that Gurqbal Singh son of Jaswinder Singh, respondent No.2-complainant, had lodged complaint with the police on the basis of which FIR No.288, dated 05.11.2005 for the offences punishable under Sections 148, 307, 323, 427 and 452 read with Section 149, IPC, and Sections 25 and 27 of the Arms Act was registered against the petitioners with regard to the same incident which has been detailed in the complaint, Annexure P2. After thorough investigation, Sections 307, 427 and 452, IPC, and Sections 25 and 27 of the Arms Act were ordered to be deleted while Section 336, IPC, was ordered to be added and the charge-sheet against the petitioners was presented before the learned Area Judicial Magistrate. Since Jasjit Singh and Satnam Singh (petitioner Nos.2 and 4 respectively) had also received injuries in the same incident and, as such, the cross-case was registered against respondent No.2-complainant and his companions. After investigation, Section 307, IPC, etc. were also deleted from the cross-case registered at the behest of petitioners side and the charge-sheet was ordered to be presented against respondent No.2 and his companions for the offences punishable under

Sections 148, 323, 324 read with Section 149, IPC. After presentation of the charge-sheet against the petitioners, complaint, Annexure P2, was filed by respondent No.2-complainant, on the basis of which the petitioners have wrongly been summoned to face trial for the additional offences punishable under Sections 307, 427 and 452, IPC, and Sections 25 and 27 of the Arms Act.

Learned Senior counsel further argued that the version presented by the petitioners side before the the police as well as before the learned Summoning Court in the complaint filed by the petitioners side is more probable and correct while the version put up by respondent No.2-complainant is absolutely vague and no credence can be attached to the same. It was also argued that even if the whole version of the complainant side is taken at its face value, then also the ingredients of Section 307, IPC, are not attracted.

On the other hand, learned counsel for respondent No.2-complainant vehemently opposed the submissions made by the learned senior counsel for the petitioners and submitted that the Investigating Agency had colluded with the petitioners and, as such, Sections 307, 427 and 452, IPC, and Sections 25 and 27 of

the Arms Act were wrongly deleted and the charge-sheet was presented for the minor offences and, as such, respondent No.2-complainant, who had received the injuries, had no option but to present the complaint before the learned Area Judicial Magistrate. From the contents of the complaint and the depositions of CW1 Jaswinder Singh, CW2 Guriqbal Singh, CW3 Jagmit Singh, CW4 Dr.Gurvail Singh as well as the summoning order, it is well established that the petitioners had committed the offences for which they have been summoned to face trial and, as such, there was no force in the submissions made by the learned senior counsel for the petitioners. She also submitted that respondent No.2-complainant and others were also booked in a cross-case arising out of FIR No.288, dated 05.11.2005, registered at Police Station, Civil Lines, Batala, and police after investigation had deleted Section 307, IPC, but the petitioners side had also filed a complaint in which respondent No.2-complainant and others were also summoned to face trial for the offence punishable under Section 307, IPC. The said complaint and the summoning order was also challenged before this Court by way of a petition under Section 482, Cr.P.C., which was ordered to be heard along with the present petition and the same

was withdrawn with the liberty to take all the pleas before the learned trial Court. It has also been submitted by Ms.Isha Goyal, Advocate, learned counsel for respondent No.2, that disputed question of facts cannot be decided in a petition under Section 482, Cr.P.C.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

As per the facts described in the complaint, complainant his brother and sister were co-sharers in agricultural land. Out of the said joint land, 2 kanals of land beyond his share was sold by the brother of the complainant to his brother-in-law Baljinder Singh. The said sold land was further sold by Baljinder Singh to a property dealer. Due to intervention of an Ex.MLA, the matter was sorted out and a compromise was effected. Respondent No.2-complainant Jaswinder Singh started construction over the land in his possession. On 05.11.2005 at 9.45 a.m., petitioner Gurinderjit Singh armed with .315 bore rifle, Jasjit Singh armed with revolver, Sukhjinder Singh armed with double barrel gun, Nirmal Singh armed with double barrel rifle, Satnam Singh and Dora alias Sukhdev Singh armed with dangs

along with certain unidentified persons, who were also carrying dangs and iron rods, while riding on a tractor trolley, trespassed into the piece of land possessed by the complainant where the construction work was going on. Petitioner Gurinderjit Singh Bajwa exhorted that Jaswinder Singh (complainant) be taught a lesson for taking the possession and in the meantime started firing from his rifle with an intention to kill the complainant. Jasjit Singh, Sukhjinder Singh and Nirmal Singh petitioners had also fired the shots from their respective arms at the complainant with an intention to kill him. The complainant, his son Guriqbal Singh Bajwa and one Jagmeet Singh ran towards their house to save themselves but the petitioners carrying their respective weapons criminally trespassed into the house of the complainant and caused injuries to the complainant and his family members. The windows etc. of the house of the complainant were damaged. The complainant and his son Guriqbal Singh were dragged to the fields by the petitioners side and caused injuries to them (complainant side). The occurrence was witnessed by Balwinder Kaur and Manpreet Kaur, wife and daughter of respondent No.2 respectively, and on raising noise by them, the petitioners along with their respective weapons, while riding the tractor trolley,

retired from the spot. The motive for the trespass and attack on the complainant side was to take possession of the plot on which the construction was going on.

Injured Jaswinder Singh and Guriqbal Singh were shifted to the hospital where Dr.Gurvail Singh medico-legally examined both of them. The matter was reported to the police by Guriqbal Singh, on the basis of which FIR No.288, dated 05.11.2005 for the offences punishable under Sections 148, 307, 323, 427, 452 read with Section 149, IPC, and Sections 25 and 27 of the Arms Act was registered at Police Station, Civil Lines, Batala, against the petitioners. During investigation, police deleted Sections 307, 427 and 452, IPC, and Sections 25 and 27 of the Arms Act and presented the charge-sheet. Dis-satisfied with the investigation carried out by the police, respondent No.2-complainant Jaswinder Singh filed the complaint before the learned Area Judicial Magistrate. In support of his complaint, Jaswinder Singh appeared as CW1, Guriqbal Singh as CW2, Jagmit Singh, an eye-witness of the occurrence as CW3, Dr.Gurvail Singh, who medico-legally examined the injured appeared as CW4, while Constable Harjit Singh as CW5.

While passing the summoning order, Annexure P3, the

learned Judicial Magistrate Ist Class, Batala, concluded as under:-

“In view of the discussion above and the evidence led on the record, it is observed that there are sufficient grounds to proceed against the accused under Sections 307, 452 and 427, IPC, and 25/27/54/59 Arms Act. The accused are already facing trial in the Court under Sections 325/324/323/148/149, IPC. Now, the accused be also summoned under Section 307, 452 and 427, IPC, and 25/27/54/59 Arms Act for 01.12.2008, on filing of P.F., and copies of the complaint.”

Two parallel versions have been put up by two sides-one by the petitioners and another by respondent No.2-complainant. Disputed questions of facts have been raised by the learned counsel for the petitioners. Which version is correct cannot be adjudicated upon while deciding the petition under Section 482, Cr.P.C. Learned Judicial Magistrate Ist Class, Batala, after perusing the material available on record, proposed to summon the petitioners to face trial.

A conjoint reading of Sections 200 to 203, Cr.P.C. would reveal that a Magistrate must first examine on oath the

complainant and his witnesses present, if any, and then he would dismiss the complaint forthwith if-

- (a) he finds that no offence has been committed; or
- (b) if he distrusts the statements of the complainant and his witnesses examined; and
- (c) on a consideration of the result of the inquiry or investigation, if any, under Section 202, Cr.P.C., he thinks that there is no ground for proceedings further.

But in any of the above eventualities, the Magistrate has to record reasons in support of his view. If on a bare perusal of the complaint or the evidence it comes out that the essential ingredients of the offence alleged are absent or that the dispute is only of a civil nature or that there are patent absurdities in the evidence and it would be wastage of time of the Court to proceed further with the complaint, in that eventuality it (complaint) has to be dismissed. However, where the contents of the complaint are corroborated by the deposition of the complainant and the witnesses so examined during the course of inquiry, in that eventuality the Magistrate has to summon the accused persons to face trial. The words 'sufficient grounds for proceeding', found in

Section 203, Cr.P.C., show that all the Magistrate is expected to do is, to see whether there are sufficient grounds for proceeding against the accused for an offence and at that stage he cannot go to the truth or otherwise of the allegations made in the complaint. The standard of proof required at the stage of inquiry is not the same which is expected of the complainant during the trial.

It is by now settled that the defence plea cannot be considered at the stage of passing of the summoning order nor can the order passed by the learned Magistrate issuing process be set aside while taking into consideration the defence of the accused, ordered to be summoned. It has also been settled that the proceedings on the basis of complaint should not be quashed merely on the ground that the allegations levelled in the complaint are not likely to be established by the evidence. Reference can be made to the **State of Bihar vs Murad Ali Khan**, AIR 1989 SC 1.

In the matter of **Bhaskar Lal Sharma and another vs Monica and others**, 2014(1) R.C.R.(Criminal) 987, Hon'ble the Supreme Court while dealing with the matter of summoning in a complaint case held as under:-

“6.....We would also like to observe, at this stage,

that in the present appeals, the only question that would require to be decided is whether on the allegations made in the complaint petition filed by the respondent a prima facie case of commission of offences under Sections 498-A and 406 of the Penal Code is made out against the appellants. We will not be concerned with such allegations made against the second respondent who, though named as accused No.1 in the complaint, had chosen not to question the same. In fact, the said accused has been brought on the record of the present proceedings as respondent No.2 on the basis of an application filed by the respondent Monica claiming that the addition of her husband as a respondent is necessary for the purposes of facilitating a reconciliation which, however, did not materialise though was attempted.”

Whatsoever has been argued by the learned senior counsel for the petitioners is smeared with disputed questions of facts, which can be answered only by the learned trial Court on the basis of the evidence to be led. From the material available on record, it is prima facie made out that the petitioners while

forming an unlawful assembly armed with deadly weapons like fire-arms, dangs, and iron rods criminally trespassed over a piece of land where respondent No.2 was raising construction and fired shots with intention to kill the complainant and thereafter trespassed into the house of the complainant damaged the windows etc., dragged respondent No.2-complainant and his son Guriqbal Singh and caused injuries to them with the weapons being carried by them (petitioners) and, as such, the learned Area Judicial Magistrate had rightly opted to summon the petitioners and no ground is made out to quash the complaint, Annexure P2, and the well reasoned summoning order, Annexure P3. It is apposite to mention that the similar petition filed by the complainant side has been withdrawn with liberty to take all the pleas before the Court below.

Resultantly, the present petition fails and is hereby dismissed. The observations made hereinabove are for the limited purpose of deciding the present petition.

February 19, 2015
meenu

(NARESH KUMAR SANGHI)
JUDGE