

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

CRM-M No.28442 of 2014

Date of decision: 22nd July, 2015

Nirmala Jyoti and another

... Petitioners

Versus

Gurdeep Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. D.S. Gurna, Advocate
for the petitioners.

Mr. A.S. Khinda, Advocate
for the respondent.

FATEH DEEP SINGH, J.

A criminal complaint titled 'Gurdeep Singh v. Sachin and others' was filed under Sections 406/420/34 IPC read with Section 24 of the Immigration Act pertaining to Police Station Sultanpur Lodhi before the learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi. In the complaint the allegations in precise are that on 05.10.2007 accused Sachin and his mother Nirmala Jyoti who were known to the complainant came to his residence in village Dadwindi on black Scorpio bearing registration No.PB10-BJ-9370 and in the presence of

one Inderjit Singh and Massa Singh, they took ₹5.15 lacs along with passport of the complainant's son assuring him that they will enable his son to migrate to a foreign country. It is claimed that after 15/20 days Sachin made a phone call to the complainant intimating that visa has been processed and intimated that his son Amandeep Singh was to fly on 30.10.2007. It is alleged that again on 25.10.2007 accused Sachin and his sister Reena @ Monna came to the residence of the complainant where he paid ₹4.40 lacs in the presence of witnesses and thereafter, neither his son was sent abroad nor money was returned and though he has moved the police but no action was taken and which led to filing of the complaint.

The petitioners Nirmala Jyoti and Reena @ Monna, mother and sister respectively of the accused Sachin have invoked the jurisdiction of this Court under Section 482 Cr.P.C. seeking quashing of the criminal complaint as well as the order whereby they have been summoned dated 16.07.2014 (Annexure P12) under Sections 406/420/34 IPC read with Section 24 of the Immigration Act.

Heard Mr. D.S. Gurna, Advocate representing the petitioners and Mr. A.S. Khinda, Advocate for the respondent.

The first and the foremost point that has been raised by the petitioners' counsel is that the complainant/respondent Gurdeep Singh had initially made a complaint to the police and the Economic Offences Wing, Kapurthala who during inquiry reached to a conclusion that an amount of ₹9.50 lacs was paid by the complainant to a travel

agent Kewal Singh and Sachin Kumar for sending the complainant's son to Australia and since Kewal Singh has died, the present petitioners have been implicated being close relations of Sachin who is running an IELTS school, arguing that in another complaint made on 19.04.2011 by the present complainant to the SSP, a different story has cropped up and therefore, terming misuse of the process sought quashment.

The arguments have been opposed tooth and nail on behalf of the respondent by Mr. A.S. Khinda, Advocate who has contended that the relative merits of the case of the complainant are subject matter of evidence and that the trial Court on the basis of prima facie case has summoned the petitioners and there is no occasion to discharge them merely on the basis of slight changes in the version, which has cropped up over a period of time and rather highlighted that it was more of a truthful version.

In support of his arguments, learned counsel for the petitioners has placed reliance upon '**S.K. Bhowmik v. S.K. Arora and another**' 2007(4) RCR (Criminal) 650; **Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others**' reported in 2012(4) RCR (Criminal) 689; and '**Baldev Singh v. State of Punjab and another**' 2006(1) RCR (Criminal) 119 and has submitted that failure to disclose the filing of different complaints in itself is detrimental to the interests of the complainant.

Appreciating the same, the learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi during the course of inquiry in terms of Section 202 Cr.P.C. has taken into consideration the preliminary evidence before it and after appreciating the same has drawn the conclusion that there exists a prima facie case for commission of offences under Sections 406/420/34 IPC read with Section 24 of the Immigration Act.

Learned counsel for the petitioners could not pinpoint anything illegal or perverse in the proceedings till this stage. If any prejudice has been caused to the petitioners it was for them to have moved the trial Court for their discharge under Section 245 Cr.P.C. or could have moved the Sessions Court against their summoning order in terms of Section 399/401 Cr.P.C. by way of revision and rather have come before this Court seeking quashing of the same.

Since the powers under Section 482 Cr.P.C. in view of the **‘State of Haryana and others v. Ch.Bhajan Lal and others’ 1992 AIR SC 604** are to be sparingly used only in cases where prima facie evidently there is malafide, misuse of the process of the Court or as a revenge causing immense prejudice to the petitioner. Since learned Magistrate has appreciated the preliminary evidence and after detailed discussion of the same has reached the conclusion that prima facie commission of the offences, in which petitioners have been summoned, was made out and therefore, does not augurs well for the petitioners. However, it is made clear that any such remises in the

different complaints at various times can only be used before the trial Court as to the credibility of the evidence and cannot at this juncture be of any help to the petitioners.

Thus, in view of these discussions there is no merit in the instant petition and the same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 22, 2015
rps