

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

**Crl. Misc. No. M-31777 of 2013
Date of Decision: 24.08.2015.**

Rajbir

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. T.S.Sangha, Senior Advocate with
Mr. H.S.Sangha, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Anil Bishnoi, Advocate
for respondent No. 2.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) for quashing of complaint No. 314/1 dated 7.11.2008 under Section 148, 149, 452, 323, 325, 506 of the Indian Penal Code, 1860 ('IPC' for short) (Annexure P-1) and all the subsequent proceedings arising therefrom including the summoning order dated 4.3.2010 (Annexure P-2).

Learned senior counsel for the petitioner has submitted that the Magistrate had directed the police to enquire into the matter under Section 202 Cr.P.C. Thereafter the Magistrate could not take cognizance of the complaint by recording preliminary evidence. In support of his arguments,

learned senior counsel has placed reliance on '**Smt. Prem Hazara versus Satinder Singh Grewal, 1985(2) R.C.R. (Criminal) 256**', wherein it was held as under:-

"The learned counsel for the petitioner has assailed the impugned order on two grounds. In the first instance, he has urged that on a perusal of Section 202 it is abundantly clear that if the Magistrate after perusing the statements of the complainant and the witnesses, if any, recorded under Section 200 of the Code is not satisfied that a case for summoning the accused is made out and wishes to inquire further into the matter, he has to follow the procedure indicated in the said Section, namely that he may either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. However, he has to choose one of these alternatives and he cannot have recourse to all of them. Hence, it is submitted that where a Magistrate choose to inquire into the case himself he cannot direct an investigation by the police. The learned Magistrate, in the instant case, having adopted both the courses open to him, the impugned order must be struck down as bad in law. Reliance in this context has been placed by him on some reported decisions of different High Courts, viz Sankar Chandra Ghose v. Roopraj S. Bhansally 1981 Cri, L J. 1002 (a Bench decision of Calcutta High Court), Gunturu Kotaiah v.

Radhakrishnamurty 1965 (2) Cr. L.J. 824 (2) (A.P. High Court) and Naguwa v. Veerannna Shivalingappa Kaujalagi and others, 1975 Cr. L.J. 1367 (Karnataka High Court). The sum and substance of all the decisions is that a Magistrate who embarks upon a preliminary inquiry himself under Section 202 of the Code is debarred from referring the matter to an outside agency for further inquiry, divided bent of mind, as a half-way and hybrid measure. In the first of these cases a Division Bench of Calcutta High Court following an earlier Bench decision of that very High Court held that-

"If a Magistrate postpones the issue of summons then two courses are open him. He can either make an enquiry into the case himself or direct that an investigation be made. The Magistrate can direct an investigation to be made either by police officer or by such other person as he thinks fit. If he makes an enquiry himself, he cannot direct investigation. Again, when he directs an investigation he cannot enquire into the matter himself."

Learned counsel for respondent No. 2, on the other hand, has opposed the petition.

In the present case, complainant moved a complaint under Section 148, 149, 452, 323, 325, 506 IPC against the petitioner and others. The case of the complainant was that on 3.11.2008, at about 8.30 A.M., a quarrel had taken place between the complainant and Vinod. Petitioner favoured Vinod

and due to this reason, he (petitioner) started quarreling with the complainant. However, the matter was got pacified by the villagers. On the same day, at night, when the complainant was taking rest after meals, at about 11.00 P.M., petitioner and his co-accused entered the house of the complainant. Petitioner was armed with a *jelly* and gave a blow on the left arm of the complainant below the elbow. As a result of this, complainant suffered two fractures on his left arm. Accused Rakesh gave a *lathi* blow on the left arm of the complainant. Accused Surrender gave a *lathi* blow on the right side of the waist of the complainant. Accused Mukesh gave fist blows on the nose and left eye of the complainant. Complainant approached the Magistrate with a request that FIR be got registered against the accused and the case be duly investigated.

Admittedly, the report was sought by the Magistrate under Section 202 Cr.P.C. and the police found that the complaint moved by the complainant was false. Thereafter the Magistrate recorded the preliminary evidence led by the complainant and the accused were ordered to be summoned to face the trial qua commission of offence punishable under Section 148, 323, 325, 452, 506 read with Section 149 IPC vide order dated 4.3.2010. Complainant led his pre-charge evidence and charges were framed against the accused under Section 323, 325, 452, 506 read with Section 149 IPC vide order dated 17.4.2013. Revision petition filed by the accused against the order dated 17.4.2013 was dismissed by the Court of Revision vide order dated 13.8.2013. Hence, the present petition.

Section 202 Cr.P.C. reads as under:-

“Postponement of issue of process-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session;or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath;

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant

to produce all his witnesses and examine them on oath.

3. If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant”.

Thus, as per the above provision, before issuing process the Magistrate can postpone the same and get the matter inquired from the police officer or by such other officer as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceedings against the accused. Hence, the Magistrate has proceeded with the case in accordance with law.

The judgment relied upon by the learned senior counsel for the petitioner fails to advance the case of the petitioner as it is based on different facts. In the said case, the Magistrate after recording the preliminary evidence led by the complainant, had sent the case to police for inquiry and in that situation it was held that once the Magistrate had himself chosen to inquire the case himself, he could not direct an investigation by the police.

It is a settled proposition of law that the petitioner cannot invoke jurisdiction of this Court under Section 482 Cr.P.C. after dismissal of his revision by the Sessions Court as it would amount to a second revision. However, in a case of grave injustice, this Court can interfere under Section 482 Cr.P.C.

In the present case, no grave miscarriage of justice has occurred which would warrant interference by this Court

under Section 482 Cr.P.C.

Keeping in view the facts and circumstances of the present case, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

August 24, 2015
Gurpreet