

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

Crl. Misc. No.M-31942 of 2013

Date of Decision: 21.01.2015

Ram Kumar Kalyan and another

....Petitioners

Versus

State of Haryana and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. J.S. Bedi, Sr. Advocate
with Ms. Diya Sodhi, Advocate
for the petitioners.

Mr. Munish Sharma, A.A.G., Haryana
for the respondent-State.

Mr. Parminder Singh, Advocate
assisted by respondent No.2, in person.

DAYA CHAUDHARY, J.

The present petition has been filed for quashing of Criminal Complaint No.53/3 of 2011 dated 09.06.2011 under Sections 323, 341, 506, 120-B IPC as well as Summoning Order dated 30.08.2012 and other proceedings arising therefrom.

Briefly, the facts of the case are that the complaint was filed against the petitioners alleging three specific instances (i.e. 09.11.2010, 19.11.2010 and 11.12.2010) of manhandling and hurting the complainant.

On the basis of said complaint, after recording of preliminary evidence, summoning order dated 30.08.2012 was passed for summoning the

petitioners under Section 323 read with Section 120-B IPC. Both the complaint and summoning order are subject matter of challenge in the present petition.

The summoning order has been challenged on the ground that there is no independent witness to the incident and the independent witness shown to have testified the occurrence is closely related to the complainant. Even on one date, there was no case pending in the Court between the parties, the incident has been shown to have occurred. Learned counsel for the petitioners also submits that a detailed investigation was conducted by the police and as per its report, it was found that no such incident had taken place. The complaint has been filed because of multiple litigations between the parties. Compromise was effected between the parties but subsequently, the complainant backed out and the complaint has been filed just to falsely implicate the petitioners. Learned counsel also submits that on perusal of allegations in the complaint, no offence is made out and without taking into consideration the investigation conducted by the police, the summoning order has been passed, whereas, it is mandatory for the Summoning Court to form an opinion to show that there is sufficient ground for proceeding further against the accused person before issuing summons but no such finding has been recorded.

Learned counsel for the petitioners has relied upon the judgments of Hon'ble the Apex Court in cases ***M/s Pepsi Foods Limited vs Special Judicial Magistrate 1997(4) RCR (Criminal) 761***, ***M/s GHCL Employees Stock Option Trust vs M/s India Infoline Limited 2013(2) RCR (Criminal) 519*** as well as judgments of this Court in cases ***Anil Dhawan and others vs Gurnam Singh 2008(4) RCR (Criminal) 376*** and ***Arun Jha and another vs State of Haryana and another 2006(1)***

RCR (Criminal) 300, in support of his contentions.

Learned counsel for respondent No.2 submits that specific allegations are there in the complaint and the same have been corroborated by the statements of witnesses including the statement of independent witness. For summoning of an accused person, a *prima-facie* case is to be seen and no interference is required with the summoning order at this stage. To support his contention, learned counsel has relied upon the judgments of Hon'ble the Apex Court in case **Sushil Suri vs C.B.I & anr. 2011(8) SCR 1** as well as judgment of Delhi High Court in case **Sanjay Daksha and others vs The Commissioner of Police and others** passed in **W.P. (Crl.) No.805-07/2005**, decided on **04.01.2012**.

Heard the arguments of learned counsel for the parties and have also perused the allegations in the complaint as well as other documents including the summoning order.

Admittedly, the complainant made a complaint to the police and an inquiry was conducted therein. It was found during inquiry that the allegations levelled in the complaint were incorrect. Thereafter, a complaint was filed before the Court alleging same set of allegations. In pre-summoning evidence, the complainant examined CW-1 to CW-8 and also placed on record certain documents. The Chief Judicial Magistrate, Karnal while passing the Summoning Order dated 30.08.2012 stated therein that there is no sufficient material on record to summon the accused persons for commission of offence punishable under Sections 341 and 506 IPC but there is sufficient material on record to summon the accused persons for offence punishable under Section 323 read with Section 120-B IPC. On perusal of statements of witnesses in pre-evidence stage, it appears that the complaint pertains to three specific incidents alleged to have occurred on 09.11.2010, 19.11.2010 and 11.12.2010. The incidents dated

09.11.2010 and 19.11.2010 occurred in the Court of Additional Chief Judicial Magistrate, Karnal but neither any person amongst the Court staff nor any Advocate has been cited as a witness to show that the incident was witnessed by them. One Sukh Dayal has been cited as an eye witness of the occurrence dated 11.12.2010, who is stated to be partner in business transactions of a close relative of the complainant. As per case of the petitioners, the said witness is an interested witness and is also an accused in complaint case under Section 302 IPC filed by the wife of petitioner No.1 titled as ***Omlata Kalyan vs Renuka and others.***

It is not disputed that the occurrence dated 11.12.2010 was investigated by the police in detail and it was found that no such incident took place on that day. It is also not disputed that many cases are pending between both the parties. In the Summoning Order also, it has been mentioned by the Summoning Court that as per testimony of witnesses including that of the complainant, the accused petitioners caused injuries and hit the complainant by giving a forcible shoulder blow to the complainant and threatened him to withdraw all the cases filed by the complainant and his daughter, failing which, his whole family will be eliminated. While passing the Summoning Order, the findings which were recorded, are as under :-

“ After carefully considering the arguments advanced by learned counsel for the complainant and analyzing the same in the light of facts and preliminary evidence on record, this court finds that sufficient material is not on record to summon the accused persons for commission of offences under Sections 341 and 506 of the Indian Penal Code. However, prima-facie, there is sufficient material on record to summon the accused persons for commission of alleged offence under Section 323 read with Section

120-B of the Indian Penal Code and they are ordered to be summoned accordingly for 1.10.2012 on filing of PF etc.”

On perusal of order reproduced above shows that no sufficient ground to summon the accused persons for commission of offences under Sections 341 and 506 IPC was made out but it was held that sufficient ground is there to summon the accused persons under Section 323 read with Section 120-B of the Indian Penal Code. Nowhere, it has been mentioned as to how the offence under Section 323 read with Section 120-B IPC is made out and as to how the offence under Sections 341 and 506 of the Indian Penal Code was not made out. The said observation has been made by the Summoning Court without taking into consideration the material on record including the statement of the complainant and other witnesses as well as statement of defence witness. There is no mention with regard to the inquiry conducted by the police.

The summoning of a person in a criminal case is a serious matter and it is not to be passed in a mechanical manner without recording any reason to the satisfaction of the Summoning Court. However, it is mandatory for the Summoning Court to form an opinion that there are sufficient grounds for proceeding against the accused persons before issuing summons as per requirement of the case. The Summoning Court has to scrutinize the evidence carefully; it may even by putting certain questions to the complainant and by taking into consideration the inquiry conducted by the police to find out the truth. Mere examination of a few witnesses by the complainant is not sufficient rather, order of summoning should reflect that the Summoning Court has applied its mind to the facts of the case and law applicable in the matter.

Hon'ble the Apex Court in ***M/s Pepsi Foods Limited*** case

(supra), has observed that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion. It is not sufficient that the complainant has to bring only two/three witnesses to support his allegations in the complaint to set the criminal law into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. He is to carefully scrutinize the evidence brought on record. Even he may put certain questions to the complainant to find out the truthfulness of the allegations.

In the present case, it has been mentioned in the Summoning Order that sufficient material is on record but no such finding has been recorded that the inquiry/investigation conducted by the police is not based on facts.

As per provisions of sub-section 1 to Section 204 of the Cr.P.C., the Summoning Court is to record reasons if there are sufficient grounds for proceeding against the accused persons.

Hon'ble the Apex Court in ***M/s Pepsi Foods Limited*** case (supra), has observed as under :-

“ Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the

complaint and the evidence both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

In another judgment in case **Anil Dhawan and others** (*supra*), it has been observed as under :-

“ **Criminal Procedure Code, Section 204 – Complaint case** – Magistrate examining the complainant and issuing summoning order – It is mandatory for Magistrate to form an opinion that there is sufficient ground for proceeding against the accused by issuing summons or warrants as per the requirement of the case – In the instant case, Magistrate passed a non-speaking order and did not even touch the allegations in complaint – Summoning order quashed.”

Similarly, in another case titled as **Arun Jha and another** (*supra*), it has been observed by Hon’ble the Apex Court as under :-

“ Criminal Procedure Code, Sections 200, 204 – Summoning order in complaint case – Summoning of an accused in criminal case is a serious matter – Magistrate should not issue the process mechanically merely on the basis of some statements of the alleged witnesses – It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion – The order of the Magistrate summoning the accused

must reflect that he has applied his mind to the facts of the case and the law applicable thereto- He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof – Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations, 1997(4) RCR (Crl.) 761 SC relief.”

In view of the facts and law position as mentioned above, the Summoning Court has not only recorded its finding for forming an opinion for summoning but the mandatory provisions have not been followed as the summoning order has been passed without taking into consideration the inquiry report on the same set of allegations. Even the satisfaction has not been recorded by the Court to show as to how the offence under Section 323 read with Section 120-B IPC is made out when the offence under Sections 341 and 506 IPC is not made out.

Accordingly, this petition is allowed and the impugned summoning order dated 30.08.2012 passed by the Chief Judicial Magistrate, Karnal is set aside and the Summoning Court is directed to pass a speaking order after going through the statements of the witnesses i.e not only of the complainant party but also of the petitioners and after considering the findings recorded by the police in the inquiry report as well as observations made above. The necessary order be passed within a period of one month from the date of receipt of certified copy of this order.

21.01.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE