

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-4988 of 2012(O&M)
Date of Decision: 18.02.2015

Gurbachan Kaur and others

---Petitioners

versus

State of Punjab ad others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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

Mr. Gazi Mohammad, DAG, Punjab
for the respondent-State

Mr. R.S.Sidhu, Advocate
for respondent No. 2

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

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure has been preferred for quashing criminal complaint No. 48 dated 19.4.2010 (Annexure P-23), summoning order dated 26.5.2011 (Annexure P-24) and proceedings emanating therefrom.

Counsel for the petitioners contends that the learned trial court passed the summoning order without application of mind and correctly appreciating the allegations set up in the complaint. The summoning court may not be obligated to pass a detailed order or conduct proceedings like a

criminal trial but still summoning the accused in a criminal case is a serious matter, therefore, the court is required to apply its mind to the facts of the case and materials produced on record during preliminary enquiry.

Counsel for the contesting respondent has refuted contentions of counsel for the petitioners with the submission that no fault can be found with the order dated 26.5.2011.

I have heard counsel for the parties and perused the records.

A relevant extract from the summoning order dated 26.5.2011 passed by the Judicial Magistrate reads thus:-

“The present complaint has been filed under Sections 420/467/468/471/120-B IPC. As per the facts of the complaint, a forged order was produced before the Patwari for taking benefit. To prove his case, the complainant stepped into the witness box and deposed as CW1 and corroborated the facts mentioned in the complaint. He also examined Gurmeet Singh as CW2 who also deposed on the same lines. From the collective evidence and documents produced on record, I find that there are sufficient grounds to summon all the accused for facing trial under Sections 420/467/468/471/120-B IPC Accordingly the accused are ordered to be summoned for 11.7.2011.”

Counsel for the parties have fairly conceded that it is none of the allegations in the complaint that the persons arraigned as accused forged any order or produced any forged order before patwari for taking benefit, as has been referred to in the impugned order. This fact alone is sufficient to

substantiate plea of the petitioners that the court passed the summoning order without application of mind and appreciating the controversy in right prospective. In this view of the matter, I am of the considered opinion that order dated 26.5.2011 summoning the petitioners to face trial for committing offence of forgery and fraud punishable under various provisions of the Indian Penal Code referred to in the summoning order cannot be allowed to sustain and set aside accordingly.

In view of what has been discussed hereinabove, the petition is partly allowed, summoning order dated 26.5.2011 (Annexure P-24) and proceedings subsequent thereto are set aside and the matter is remitted to the trial court for consideration of the matter afresh, in accordance with law. It is clarified that the petitioners shall not be entitled to an opportunity of being heard at the pre process stage.

(REKHA MITTAL)
JUDGE

18.02.2015

PARAMJIT