

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-43390-2014

Date of decision : 19.01.2015

Virender and others

... Petitioners

Versus

Shamsher

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Ramesh Kumar Bamal, Advocate
for the petitioners.

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') has been preferred seeking quashing of orders dated 17.09.2014 (Annexure P27) passed by the Sessions Judge, Hisar, dated 02.05.2014 (Annexure P25) passed by the Judicial Magistrate Ist Class, Hansi and complaint titled “Shamsher Vs. Virender and others” pending in the Court of Judicial Magistrate Ist Class, Hansi.

Counsel for the petitioners contends that Shamsher (respondent) got recorded his statement on the basis whereof FIR No.257 dated 25.07.2011 was registered in Police Station Narnaund. The respondent indicted 25 persons in the crime with the allegations that they caused injuries to the victim(s). Out of the persons arraigned as accused, 20 of them were arrested but later released on bail. On completion of investigation, challan was presented against 15 out of 20 persons arrested by the police.

The respondent filed the criminal complaint against the accused already

facing trial in the police case as well as against others and the Judicial Magistrate passed the summoning order dated 02.05.2014 whereby all 26 persons arraigned as accused have been summoned to face trial for offence punishable under Sections 323, 326, 147, 148, 149 of the Indian Penal Code (in short 'IPC'). The revision petition preferred by two accused namely Jasbir and Rajender (accused No.5 & 6 in the complaint) has been dismissed by the revisional Court vide impugned order dated 17.09.2014.

It is argued that as the trial Magistrate has taken cognizance of the offence on the basis of report submitted under Section 173 Cr.P.C., the additional accused can be summoned by the trial Court either under Section 193 or 319 Cr.P.C. but no separate complaint against the additional accused or for some additional offences is maintainable. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court of India in ***Jile Singh Vs. State of U.P. and another, 2012(1) RCR (Criminal) 583.***

Another submission made by counsel is that the complaint has been filed on the basis of improved version vis-a-vis first version given to the police and the same is nothing but an abuse and misuse of process of law and liable to be quashed. No offence under Section 326 IPC is prima-facie made out against the accused on the basis of evidence adduced during preliminary inquiry. It is argued with vehemence that in case the accused are forced to face the proceedings both in the police challan and in the private complaint, it would amount to double jeopardy in view of the provisions of Section 300 Cr.P.C.

I have heard counsel for the petitioners and gone through the records.

The plea of the petitioners that the criminal complaint filed by the respondent is not maintainable in the light of ratio in *Jile Singh's case (supra)* is mis-conceived and merits outright rejection. In *Jile Singh's case (supra)*, the Hon'ble Supreme Court has held that once the Sessions Court has taken cognizance of the offence pursuant to committal order, the Judicial Magistrate cannot exercise the power under Section 204(1)(b) Cr.P.C. and issue summons to the accused, meaning thereby that once the Court of Sessions has taken cognizance of the offence, the Court of Judicial Magistrate is not competent to summon an additional accused in a private complaint as it would be the jurisdiction of the Sessions Court to summon an additional accused in exercise of power under Section 319 Cr.P.C. I would hasten to add that in view of the latest judgment passed by the Apex Court *Dharam Pal and others Vs. State of Haryana and another 2013(3) RCR (Criminal) 787*, the Court of Sessions is also competent to summon an additional accused in exercise of jurisdiction under Section 193 Cr.P.C. as well. In this view of the matter, the petitioners cannot derive any advantage to their contentions from the judgment in *Jile Singh's case (supra)*.

Counsel for the petitioners has attempted to challenge correctness of version given in the complaint on the basis of previous statement got recorded by the complainant on the basis whereof FIR No.257 dated 25.07.2011 was registered in the Police Station. In the complaint, the respondent-complainant has expressed his grievance against failure of the police to initiate proceedings against the accused for the offences actually committed by them and exonerating some of them involved in the crime.

The learned trial Court passed the summoning order on the basis of

evidence adduced during preliminary inquiry. As per settled position of law, the accused have no right of hearing at the pre-process stage nor the Judicial Magistrate is competent to take into consideration any plea which may be raised by the accused in defence. In ***Vadilal Panchal Vs. Dattatraya Dulaji, (1961) 1 SCR 9***, the observation made by Hon'ble the Supreme Court may usefully be quoted hereinbelow:-

“The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has been issued and he is put on trial.”

In ***Chandra Deo Singh Vs. Prakash Chandra Bose alias Chabi Bose and another, 1963(2) Cr.LJ 397***, Hon'ble the Supreme Court of India while discussing the scope and object of the preliminary inquiry in the light of the provisions of Section 202 Cr.P.C. has held, quoted thus:-

“No doubt, one of the objects behind the provisions of Section 202, Criminal Procedure Code is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate

while making an enquiry to elicit all facts not merely with a view to protect the interest of an absent accused persons, but also with a view to bring to boor; a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under Section 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry.”

In this view of the matter, I find myself unable to accept the contentions of the petitioners to find fault in the summoning order on the basis of previous statement made by the complainant which, at best, can be used by the accused for the purpose of confrontation during trial.

Counsel has made a feeble attempt to argue that the petitioners have been wrongly summoned under Section 326 IPC. In preliminary evidence, Dr. Tej Pal Sharma was examined. He deposed that permanent cut on the ear falls within the preview of disfiguring of face. That being so, no fault can be found in the order summoning the accused for commission of offence punishable under Section 326 IPC but without prejudice to the rights of the petitioners to raise any such plea at an appropriate stage of the proceedings.

The plea of the petitioners that continuation of proceedings in

the complaint case amounts to double jeopardy is misconceived and merits outright rejection. However, keeping in view the provisions of Section 210 Cr.P.C., the petitioners are at liberty to file an appropriate application for clubbing of both the cases which will be decided by the trial Court in accordance with law.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed in limine.

(REKHA MITTAL)
JUDGE

January 19, 2015.

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