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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1364-2012 [O&M]
Date of Decision : December 2nd,2015

Inder Singh Petitioner

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. D.D.Sharma, Advocate,
for the petitioner.

Mr. D.S.Virk, AAG, Punjab

Mr. Munish Garg, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present revision petition is directed against order dated 10.8.2011 [Annexure P/1] passed by Judicial Magistrate Ist Class, Pathankot whereby complaint for summoning of Nikhil and others as accused for commission of offence punishable under Sections 302/120-B IPC or in the alternative for entrusting the enquiry to some senior police officer, was dismissed.

Revisionist has challenged the order, Annexure P/1, mainly on the ground that his son Narender Singhal, aged about 22 years, was murdered under suspicious circumstances. He was a student of Institute of Hotel Management Nutrition and Catering, Gurdaspur. On 21.08.2004,

Narender Singhal [deceased] alongwith Abhinav Sharma and Tanuj Sachdeva had gone for a picnic at Madhopur near Pathankot. Narender Singhal slipped in the canal. To save him, another student, Abhinav Sharma jumped into the canal, but he could not save him and also flew with the water. Tanuj Sachdeva also jumped in the water to save his friends, but he could not save them and unfortunately, Narender Singhal and Abhinav Sharma flew with the water and died. Their dead bodies were recovered from the bank on 22.8.2004. Inquest proceedings under Section 174 Cr.P.C. were completed. On the basis of investigation, it was found that death of Narender Singhal and Abhinav Sharma was because of drowning in the water and there was no foul play in their death.

However, revisionist suspected some foul play in the death of his son, Narender Singhal and made a complaint to the police vide DDR No. 27 dated 10.9.2004. Revisionist was suspecting that his son had developed relations with some of his classmates, namely, Nikhil, Ms. Haripriya and Ms. Swati Sharma and he was in touch with them. Nikhil and Swati Sharma were inclined with each other. As per the revisionist, his nephew Jitender Singhal informed him that the cousin of Ms. Haripriya, who was also student of the same Institute, had threatened Narender Singhal with dire consequences in case he continued his affairs with Haripriya. Revisionist also came with the plea that his nephew told him that his son developed some intimacy with Swati Sharma which was not to the liking of Nikil and Haripriya and only because of that, his son had been murdered by some students as a result of conspiracy.

Revisionist had earlier filed a writ petition, bearing No. CrI.M.No.

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16856 of 2005 before this Court and the same was dismissed. Revisionist approached Hon`ble Supreme Court and the Hon`ble Apex Court asked the petitioner-revisionist to file a complaint under Section 156(3) Cr.P.C. or to make a complaint under Section 200 Cr.P.C. before the appropriate authority and as such, the present complaint was filed by him before the Magistrate.

During the pendency of the complaint, learned Magistrate examined complainant, Inder Singh as CW-1 and after considering material and evidence available on the file, formed the opinion that the complainant has not been able to make out a *prima facie* case for summoning any body as accused and no body can be summoned on the basis of suspicion alone. Feeling aggrieved of passing of the impugned order dated 10.8.2011, the revisionist is before this Court.

Learned counsel for the revisionist took the plea that learned Magistrate has simply dismissed the complaint without any reasoning and did not apply its judicious mind. As per learned counsel for the revisionist, learned Magistrate has not considered the aspect that the son of the revisionist was murdered because of deep conspiracy as intimacy of Narender Sehgal with some of his colleagues was not to the liking of others. Learned Magistrate was required to apply its judicious mind, rather than going by the order passed by this Court whereby, the petition earlier filed by the revisionist was dismissed. Such observations were recorded by Hon`ble Supreme Court in SLP [Crl.] No. 6306 of 2006 decided on 24.08.2009 as specific order was passed that "if such a complaint is filed, the Magistrate shall proceed with the matter independently and without

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being influenced by any of the materials as available.”

Learned State counsel submitted that the matter has already been investigated by higher police officers and it was found to be a case of unfortunate incident of drowning and no motive could be attributed to any body else for causing death of Narender Singhal or Abhinav Sharma. More so, if at all, the revisionist was not satisfied with the passing of order under challenge, he could have filed a Protest Petition which has not been done.

Learned counsel representing respondent No. 2, took the plea that learned Magistrate has considered the statement made by Tanuj Sachdeva who had made unsuccessful effort to save his friends. The investigation proceedings were duly carried out and learned Magistrate has rightly dismissed the complaint holding that no body can be summoned to face trial simply on presumption and suspicion.

Having considered the matter in its entirety, there is no dispute that this was a most unfortunate incident resulting into death of two young boys by way of drowning. Revisionist being father of a young boy, his mental state of affair can be taken into consideration with sympathy. He had every reason to suspect a foul play. But at the same time, law expects that there must be some substance or material so as to summon any body to face trial for commission of offence punishable under Section 302 IPC or identical offences. Law on the point is also settled that a person can not be summoned to face criminal trial merely on the basis of presumption and suspicion. Revisionist also moved an application under Section 202 IPC and learned Magistrate, vide order dated 7.6.2010, directed the SHO, Police Station Sujampur to investigate the matter and submit the report.

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Accordingly, the matter was investigated by the police and on the basis of investigation, the police had submitted the report that it was an unfortunate case of drowning and no body was suspected for committing murder. The complainant has rightly availed the remedy of filing complaint under Section 156(3) Cr.P.C. before the Magistrate and learned Magistrate had given due opportunity to lead preliminary evidence. In the process, statement of the complainant-revisionist was recorded. Learned Magistrate, while independently appreciating the evidence and examining the statement of complainant, formed the opinion that no case is made out for summoning of any body as accused in this case because a person cannot be summoned on the basis of suspicion or presumption. The impugned order passed by learned Magistrate does not suffer from any illegality or perversity, calling for interference by way of this petition and the present revision petition stands dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

December 2nd, 2015
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