

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-9277 of 2015
Date of decision : May 29, 2015

Rajesh Dhanda

...Petitioner...

versus

Directorate of Revenue Intelligence and another

...Respondents...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Jagmohan Bansal, Advocate,
for the petitioner.

Mr. Satish Aggarwal, Advocate with
Mr. Sunish Bindlish, Advocate,
for the respondents.

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

JASPAL SINGH, J.

Instant petition has been preferred by Rajesh Dhanda under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of complaint No. 154, dated July 18, 2012 (Annexure P-7) as well as summoning order dated July 20, 2012 (Annexure P-8) passed by the Id. Chief Judicial Magistrate, Ludhiana whereby he has been summoned to face trial under Section 174 IPC with further prayer to summon the record of respondent and to direct Central Forensic Science Laboratory, New Delhi to render its opinion about the authenticity of market enquiry

dated May 31, 2012 (Annexure P-2).

2. The facts giving rise to the instant petition are that in the morning of April 26, 2012, officer(s) of Directorate of Revenue Intelligence conducted the search of factory of the company as well as residential premises of petitioner and seized certain documents including cheques, computers etc. passport of petitioner beside a sum of ₹4.67 lac. Though, an inventory was prepared in respect of seized documents/articles, however, no panchnama was prepared in respect of passport of petitioner, at that time.

3. Feeling aggrieved against the alleged acts and omissions of DRI, petitioner preferred a CWP No. 10750 of 2012 before this Court, during the pendency of which, an interim order was passed by this Court after hearing learned counsel for the parties on June 01, 2012, whereby respondents were directed to return passport of petitioner. However, with respect to release of goods, competent authority was directed to take decision within seven days. Petitioner, in view of the said order moved an application before CJM, Ludhiana seeking permission to visit abroad but his prayer was declined, which necessitated the filing of CRM-M-18336 of 2012 before this Court by the petitioner seeking permission to visit abroad. After hearing both the parties, petitioner was allowed to visit Abu-Dhabi for a period of seven days with direction to return before July 19, 2012, subject to furnishing of surety/indemnity/bank guarantee to the tune of ₹1 crore with two sureties of the like amount vide order dated July 03, 2012 (Annexure P-4). Since, petitioner was directed to furnish two sureties

of ₹1 crore each as a condition precedent to visit abroad, necessary sureties/documents were to be arranged and furnished before the Registry of this Court and with a view to comply with the same, petitioner visited this Court on 5th July, 7th July, 9th July and 10th July. Since, amount of surety was very huge, he had to visit the office of Registrar number of times. But in the meanwhile, a summon was received by the petitioner on July 04, 2012 with a direction to appear before respondents on July 09, 2012 for recording his statement in respect of the search and seizure. Though, petitioner moved an application and showed his inability to appear on the said date and requested to defer the recording of his statement to some other date, but his request was declined. As a result whereof, a complaint dated July 18, 2012, was moved by the respondents to the Court of CJM, Ludhiana, in which, petitioner was summoned to face trial vide order dated July 20, 2012, which is subject of quashing in the instant petition.

4. The contention of learned counsel for petitioner is that order dated July 03, 2012 as well as proceedings prior to that were in the knowledge of respondents and they were also aware that petitioner has to furnish the surety bonds for going to abroad, but they took hasty steps to serve notice asking him to appear on July 09, 2012. His request moved on July 09, 2012 was also declined without assigning any cogent or convincing reason. Respondents have also hurriedly lodged a complaint, on the basis of which, petitioner was summoned. There was not even a single instance, in

which, complaint under Section 174 IPC has been lodged by the DRI for such a first default. In fact, respondent No. 2 was having an ill-will or grudge qua petitioner for the reasons best known to him. Moreover, petitioner has already appeared and got his statement recorded on some subsequent dates and his presence is no more required. Even, he is ready to appear as and when called upon by respondents in connection with his case i.e. case of search and seizure on his premises. While concluding his arguments, learned counsel for petitioner has contended that since the complaint is nothing but an abuse of the process of law and clearly spells out the mala fide on the part of the respondents, the FIR is liable to be quashed.

5. On the other hand, learned counsel for respondents have argued with vehemence that firstly, instant petition under Section 482 Cr.P.C. is not maintainable. Secondly, that whatever are the pleas taken by the petitioner in the instant petition are only his defence and can be put forth by him during the course of proceedings before Id. CJM, Ludhiana. It has also been contended by learned counsel for respondents that there is specific remedy provided to petitioner by way of filing revision against summoning order dated July 20, 2012 which has not been availed by him so far. Summoning order was passed on July 20, 2012, whereas after availing approximately a period of 3 years, petitioner has filed instant petition without availing remedy of revision before Id. CJM. So, when there is specific remedy provided by way of appeal or revision, inherent powers under Section

482 Cr.P.C. cannot and should not be resorted to. In support of his contention, learned counsel for respondents have placed reliance upon the judgment of Hon'ble Apex Court captioned as **“Mohit @ Sonu and another vs. State of U.P. and another”, 2013 (3) RCR (Criminal) 673.**

6. Learned counsel for the respondents have also stressed during the course of arguments while referring to the illustrations highlighted in case of **“State of Haryana and others vs. Bhajan Lal and others”, 1992 Supp. (1) SCC 335** that extraordinary power under Article 226 of the Constitution of India or inherent powers under Section 482 Cr.P.C. can be exercised by this Court either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. In the case in hand, there is nothing on record even to suggest that allegation made in the complaint taken on its face value and accepted, do not constitute in their entirety any prima facie offence. Rather, allegations contained in complaint and documents accompanying it do disclose the commission of offence due to which summoning order dated July 20, 2012 (Annexure P-8) has been issued by the Id. CJM, Ludhiana. Thus, case of petitioner even does not fall within the categories highlighted in the above referred judgments. Learned counsel for the respondents accordingly prayed for dismissal of petition.

7. This Court has given an anxious thought to the submissions made by learned counsel for the parties and has minutely gone through the records and documents available.

8. There is no dispute with regard to legal proposition as highlighted in case ***Mohit Sonu and another case*** (supra) but at the same time, it is also well settled and is evident from plain reading of Section 482 Cr.P.C. that there is nothing in the Code that sub-Section (2) of Section 397 shall be deemed to limit inherent powers of the High Court and powers provided under Section 482 Cr.P.C. can be exercised in case, impugned order clearly brings about a situation which is an abuse of the process of law or for the purpose of securing the ends of justice.

9. Now, coming to the second limb of submission put forth by learned counsel for the respondents, it would be appropriate to reproduce, relevant paragraphs No. 102 and 103 of the judgment relied upon by learned counsel for respondents captioned as ***Bhajan Lal and others' case*** (supra), which highlights the guidelines and formulates the list or the circumstances in which extraordinary powers under Article 226 of the Constitution of India or under Section 482 Cr.P.C. for quashing of FIR or complaint can be exercised. Paras No. 102 and 103 are extracted as below:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of

justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

10. Before proceeding to deal with the matter in controversy involved in this case, it would be pertinent to mention that prior to passing of the order dated July 03, 2012 by this Court, respondents did not point out or place on record any notice allegedly issued by them calling upon petitioner to appear before it on July 09, 2012 for getting his statement recorded. Hence, a notice purported to be issued on July 02, 2012 was served upon the petitioner on July 04, 2012. Respondents were well aware about the passing of order dated July 03, 2012 that petitioner was allowed to visit abroad and for that purpose, he has to furnish two sureties of ₹1 crore each before the Registrar of this Court and he was making an arrangement thereof. On receipt of notice served upon the petitioner through an official of the respondents, he moved an application on July 09, 2012 i.e. the date of his appearance before DRI, Ludhiana making a humble request to exempt his personal appearance unfolding

detailed reasons and grounds of his non-appearance but that was declined and a complaint under Section 174 IPC was lodged in the Court of CJM, Ludhiana on July 18, 2012, in which, he has been summoned to face trial vide order dated July 20, 2012.

11. It is also pretty settled that where a criminal proceedings is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with some ulterior motive, the same can be quashed while exercising inherent powers provided under Section 482 Cr.P.C. as the same is nothing but an abuse of the process of law or the power of competent authority.

12. Adverting to the facts and circumstances of the case in hand, for the sake of repetition, petitioner was allowed to visit abroad by this Court vide order dated July 03, 2012 but at the time of passing that order, it was not pointed out by the respondents that petitioner has been summoned for recording the statement on July 09, 2012, especially, in the circumstances that respondents were well aware of records and notice was served on the next day i.e. July 04, 2014. The request for deferment of the proceedings pending before the DRI, Ludhiana were also declined despite the fact that written request was moved in this regard. All this leads to show that respondents have departed from natural normal rule and hastily declined the application on July 09, 2014 and subsequently, preferred a complaint under Section 174 of the IPC. A hastily decision appears to have been taken by the respondents for lodging complaint. Otherwise, petitioner was not running from appearing

before the respondents and to make statement, which has been done so by him on the subsequent dates. He has also undertaken to appear as and when called upon to do so. Thus, circumstances narrated above are suggestive of the fact that declining of the request seeking exemption from his personal appearance on July 09, 2012 and lodging of complaint immediately, thereafter, are nothing but an abuse of the process of law.

13. In the light of various circumstances narrated above, this Court is of the considered view that petition deserves to be accepted. Accordingly, petition is allowed whereby impugned complaint dated July 18, 2012 (Annexure P-7) as well as impugned order dated July 18, 2012 (Annexure P-8) and subsequent proceedings, if any, qua petitioner are quashed. As far as other relief sought by the petitioner is concerned, the controversy in that regard has already disposed of by the Division Bench of this Court and no specific order in this regard is required to be passed by this Court.

May 29, 2015

sonika

**(JASPAL SINGH)
JUDGE**