

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

**1. CRM No.M-20136 of 2005 (O&M)
Date of Decision: May 18, 2016**

Manjinder Kaur Petitioner

vs.

State of Punjab and another Respondents

**2. CRM No.M-76344 of 2006 (O&M)
Date of Decision: May 18, 2016**

Bhagwant Singh Petitioner

vs.

State of Punjab and another Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Yogesh Goel, Advocate for the petitioner.

Mr. Ashish Sanghi, DAG, Punjab.

Mr. Pankaj Bali, Advocate for respondent No.2.

1. Whether Reporters of Local Newspapers 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?

Kuldip Singh J.(Oral)

This order of mine shall dispose of two CRM-M Nos.20136 of 2005 and 76344 of 2006, filed against the same order.

Both the petitioners seek quashing of complaint dated 13.02.2003 (Annexure P-2) filed under Sections 193, 211, 341, 342 and 120-B IPC and the summoning order dated 06.05.2004 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Ludhiana, vide which the petitioners has been summoned to face trial under Section 193 and 211 Cr.P.C.

The allegations are that the petitioner Manjinder Kaur and her brother Bhagwant Singh lodged FIR No.95, dated 19.05.1992, reported u/s 406/498A IPC at Police Station Focal Point, Ludhiana against the brother of complainant Sher Devinder Singh and his

family members on the basis of false documents and a challan was presented in the court. The brother of the complainant Narinder Singh Kalirao remained in police custody for three days and three nights and the complainant himself remained in police custody for three days and three nights. The wife of the complainant also remained in police custody for two days and one night for the commission of offences punishable under Sections 406 and 498-A IPC. The complainant and others challenged the charge sheeted before this Court by way of filing CRM-M No.287 of 1994 titled as Sher Singh and others vs. State of Punjab and another. This Court vide order dated 04.01.2002 partly allowed the petition and quashed the FIR in question along with its consequential proceedings qua Narinder Singh, Surinder Singh, both sons of Sher Singh and Harinder Kaur w/o Surinder Singh.

It was alleged that the complainant along with police officials (not summoned) harassed and detained the petitioners. The lower court vide impugned order observed that the police officials were discharging their official duty. However, the present petitioners were summoned under Sections 193 and 211 Cr.P.C.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioners contends that the trial court cannot take cognizance of the offences punishable under Sections 193 and 211 Cr.P.C.

In view of the bar of Section 195 Cr.P.C., the complaint was to be made by the concerned authorities and a private complaint

is not maintainable. In this case, Section 193 Cr.P.C. is sought to be attracted on account of the fact that during investigation, the opinion of District Attorney (Legal) was obtained, which is alleged to be forged.

Learned counsel for respondent No.2 has argued that when some forged documents are prepared outside the proceedings, then the bar of Section 195 Cr.P.C. is not attracted. Reference has been made on the authority of Hon'ble the Supreme Court delivered in case of ***"Iqbal Singh Marwah and another vs Meenakshi Marwah and another"***, 2005(2) R.C.R. (Criminal) 178.

I am of the view that the said authority is not attracted in the present case. In this case, during investigation, the police had obtained the opinion of District Attorney (Legal) whether the offences under Sections 498-A and 406 are made out or not? Therefore, the summoning cannot be ordered under Sections 193 and 211 Cr.P.C. These Sections are specifically covered under the bar of Section 195 Cr.P.C. Admittedly, under Section 195 (1)(b)(i) Cr.P.C., the court cannot take the cognizance of any offence punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228 IPC, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court unless the complaint has been made in writing by that Court or by such officer as that Court may authorize or by some other Court to which that Court is subordinate. Here the police official, who were conducting the investigation or who received the complaint have not filed the complaint. Therefore, the Court cannot take the cognizance of the said offences.

As such, the present petition is allowed and the summoning order dated 06.05.2004 passed by Sh. B.S. Deol, JMIC, Ludhiana is quashed.

Accordingly, both the petitions are allowed.

May 18, 2016
sarita

(KULDIP SINGH)
JUDGE