

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM No.M-12665 of 2010 (O&M)
Date of decision: January 21, 2016.

MAJOR SINGH AND ORS.

... **Petitioners**

v.

STATE OF PUNJAB AND ANR.

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. S.S. Swaich, Advocate for the petitioners.

Mr. Varun Sharma, Asstt. Advocate General, Punjab.

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

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

Kuldip Singh, J. (Oral):

Impugned in the present petition is the order dated 5.9.2009 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Khanna vide which the petitioners were summoned to face trial under Sections 192/193 IPC.

The short controversy which is necessary to be mentioned for the disposal of the present petition is that the complainant-respondent filed a criminal complaint before the Magistrate under Sections 192, 193, 120-B IPC read with Section 340 Cr.P.C. alleging that all the three accused-petitioners had filed a written statement making false averments regarding denial of

marriage of Manjit Singh with the complainant. Bhuri, sister of Manjit Singh, stepped into the witness box to deny such marriage. However, later on, in some other proceedings, they have admitted the marriage. Therefore, it was alleged that a false statement/evidence was given before the court in the civil suit.

On the receipt of the complaint, the Magistrate recorded preliminary evidence and after going through the preliminary evidence, passed the summoning order under Sections 192, 193 IPC.

I have heard learned Counsel for the parties.

Admittedly, the offence alleged in the complaint is stated to have been committed during the proceedings before the civil court. Section 195 IPC specifically provides that if the offence is punishable under Sections 192, 193 IPC, and some other offence is committed in relation to the proceedings with the Court, no court shall take cognizance, except on the complaint in writing of that court or by such an officer of the court as that court may authorize in writing in this behalf or some other court to which the said court is subordinate. For the purpose of making of complaint, the procedure under Section 340 Cr.P.C. was required to be followed. In the present case, such procedure was not followed. The Magistrate simply recorded the preliminary evidence as if it is a private complaint and passed the summoning order.

As such, the impugned order is contrary to law and is accordingly set aside. The case is remanded to the court of SDJM,

Khanna with a direction to follow the procedure laid down under Section 195 IPC and Section 340 Cr.P.C. and after satisfying the said procedure, pass a speaking order.

The complainant-respondent, through counsel, is directed to appear before the SDJM, Khanna on 25.2.2016 at 10 AM.

The petition stands allowed accordingly.

January 21, 2016.
kadyan

[Kuldip Singh]
Judge