

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

**Criminal Misc. No.M-18591 of 2013(O&M)
Date of Decision: 28.04.2016**

Anil Sharma & others

...Petitioner(s)

Versus

Rajender Parshad Arora

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

- 1. Whether reporters of local newspapers may be allowed to see judgment?*
- 2. To be referred to reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present:- Mr. P.S. Hundal, Sr. Advocate with
Mr. Jashandeep Singh, Advocate
for the petitioners.

Mr. Ramandeep Singh, Advocate
for the respondent.

HARI PAL VERMA J.(Oral)

Prayer in this petition filed under Section 482 CrPC is for quashing of complaint No.17-1/10/12 dated 20.3.2010 under Sections 323, 341, 384, 500, 506, 147, 148 and 149 IPC and the summoning order dated 6.3.2013 under Sections 323, 506, 147, 148 and 149 IPC passed by learned Judicial Magistrate Ist Class, Sirsa, whereby the petitioners have been summoned to face trial.

It is the case of the petitioners that petitioners no.1, 3 and 5 are Managers in a company based at Chandigarh. Petitioners no.2 and 6 are Zonal Managers of the company and are based at New Delhi, whereas petitioner no.4 is Area Sales Manager of the company and based at Rohtak. The respondent-complainant is the State General Secretary of the Haryana Medical and Sales Representatives Union and is based at Sirsa.

On 13.5.2009, petitioner no.1 and other officers of the company were assaulted, intimidated and manhandled by the respondent and others. Accordingly, FIR no.303 dated 13.5.2009 under Sections 147, 149, 323, 341, 504, 506 IPC was registered at Police Station City Sirsa. The respondent and his co-accused were arrested by the police. The petitioners have been cited as witnesses by the police in the challan put up against the respondent and other accused. However, in order to overawe the management of the company, the respondent filed a complaint under Sections 323, 348, 384, 500, 506, 147, 148 and 149 IPC at Sirsa. In the said complaint, the respondent – Rajender Parshad Arora examined himself as CW-1 whereas Jitender Sharma as CW-2 and Dr. Kuldeep Singh as CW-3. On the basis of preliminary evidence, learned Magistrate summoned all the petitioners under Sections 323, 506, 147, 148 and 149 IPC vide order dated 6.3.2013 without holding any enquiry, as envisaged under Section 202 CrPC.

Reply on behalf of the respondent was filed and the complaint as well as the summoning order dated 6.3.2013 have been defended. It is on the basis of preliminary evidence, the complainant has himself appeared and produced other witnesses to prove the occurrence along with the doctor witness, who proved the injuries received by the complainant at the hands of the accused persons. The presence of the complainant and other accused is admitted in view of FIR no.303 dated 13.5.2009 under Sections 147, 149, 323, 341, 504, 506 IPC registered at Police Station City Sirsa. It has been further stated that Section 202 CrPC has been fully complied with and the petitioners were summoned after due enquiry. In fact, Section 202 CrPC has been complied with for two reasons, firstly, that the accused were summoned after enquiry in the shape of examination of witnesses and the doctor and secondly, it is admitted case of the complainant that on the day of occurrence, the complainant along with other co-accused was present in the city.

Learned senior counsel for the petitioners has argued that the respondent-complainant has examined himself as CW-1, Jitender Sharma as CW-2 and Dr. Kuldeep Singh as CW-3 and it is only on the basis of this evidence, learned Magistrate has summoned all the petitioners without holding any enquiry, as provided under the amended provisions of Section 202 CrPC w.e.f. 23.6.2006, which are duly applicable to the facts of the present case, as all the petitioners –accused were residing in the

area outside the jurisdiction of Judicial Magistrate Ist Class, Sirsa. He has placed reliance upon judgment of Hon'ble the Apex Court in the case of **M/s HGCL Employees Stock Option Trust v. M/s India Infoline Limited 2013(2) RCR (Criminal) 519** in support of his argument that in order to issue summons, the Magistrate is required to record his satisfaction about the *prima facie* case against the petitioners and the role played by them in the capacity of office bears which is *sine qua non* for initiating criminal action against them. He further submitted that summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion, as a matter of course and the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to existence of *prima facie* case against the accused on the basis of specific allegations levelled in the complaint after appreciating the evidence and other material on record. However, in the present case, learned Magistrate has not recorded his satisfaction about the *prima facie* case against the petitioners and the role played by them in the capacity of office-bearers, which is *sine quo non* for initiating criminal action against them.

On the other hand, learned counsel for the respondent has argued that against the order of summoning, the petitioners have got the remedy to file a revision petition before Sessions

Judge, but for the reasons best known to the petitioners, the said statutory remedy has not been invoked and therefore, the present petition is not maintainable. He further submitted that summoning of the petitioners is based on the evidence, as adduced by the complainant witnesses and the said order dated 6.3.2013 passed by the Magistrate is a detailed and speaking one and the same has been passed by the learned Magistrate after applying his mind to the facts of the case and the evidence so adduced. The respondent-complainant has duly examined himself as CW-1, being the complainant as well as copy of MLR in the preliminary evidence. He argued that on the point of summoning of accused in a complaint case, only facts available have to be analysed, in order to see whether the accused persons are involved in commission of offence and the prospects of their involvement in the crime are not the relevant at that point of time. For summoning, learned Magistrate has to show his satisfaction that *prima case* is made out against the accused and the evidence is not to be scrutinized minutely.

I have heard learned counsel for the parties and perused the impugned order of summoning.

This Court finds that though there is no report under Section 202 CrPC on record, however, learned Magistrate has passed the summoning order on the basis of evidence so adduced by the complainant including the doctor witness. Section

397 CrPC provides the remedy against the order of summoning passed by the Magistrate. Section 397 CrPC reads as under:-

“397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

Admittedly, the petitioners has not availed the remedy of revision against the order of summoning. This Court in the

case of **Uppal Credit & Investment Pvt. Ltd. v. Ashwani Kumar**

CRM-M-15173-2012 decided on 22.3.2016 has analysed the scope of Section 482 CrPC against the order of summoning which was revisable and thus, amenable to revision under Section 397 and 399 CrPC. Provisions of Section 397 CrPC even put up a rider that no such power of revision either by the High Court or Sessions Court be exercised in relation to an interlocutory order, which is undisputedly a statutory provision. The very object of providing revision is to set right a patent defect or an error of jurisdiction or law. On the contentious issue that if there is a specific remedy as provided under a Statute, can this Court allow or a party can resort to invoke the inherent jurisdiction of this Court under Section 482 of the Code, this Court in **Uppal Credit & Investment Pvt. Ltd. (supra)** observed as under:-

*“The Hon’ble Supreme Court, adjudicating as to the maintainability of a revision against an order passed under Section 319 of the Code had also come to face a similar situation so posed before this Court in the second proposition, whereby a catena of case law numerated by various pronouncements of the Hon’ble Apex Court were of the view that inherent powers of this Court can only be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance, and thus, in that eventuality is certainly to the mind of this Court, a rarity to be exercised sparingly to meet the ends of justice. Thus, the ratio laid down in ‘**Adalat Prasad’s case (ibid)**’ provides that the only remedy to an accused person to*

*challenge an order in the interlocutory stage where ends of justice demand is an extraordinary remedy under Section 482 of the Code of Criminal Procedure and is only permissible if there is no remedy under the Code and thus, sufficiently clarifies under what occasions powers under Section 482 of the Code can be exercised. Reliance placed on ‘**Mohit @ Sonu and another v. State of UP**’ 2013(3) RCR (Criminal) 673. Since inherent powers are merely pure discretionary which have to be only exercised in the aid of justice. The revisional powers of High Court are supervisory only to conserve and ensure lower Courts do not exceed their jurisdiction. Therefore, propriety demands and so is the position of law laid down in 1999 Cr.L.J. 122 in the case of ‘**Padmanabh Keshav Kamat v Anup R. Kantak & others**’, that in the scheme of hierarchy the party should seek invocation from the lowest Court even if there is concurrent jurisdiction and thus, impels this Court to hold that the petitioner should seek redressal of his grievance before Court of Session under Section 399 Cr.P.C. as it would be more appropriate. The petitioner is relegated to this position and the petition stands disposed off accordingly.”*

Therefore, having considered the arguments so raised, this Court finds that since in view of Section 397(2) CrPC, against the order of summoning, the petitioners have got a specific remedy to file a revision petition before learned Sessions Judge, and therefore, provisions of Section 482 CrPC cannot be invoked without availing the remedy available to the petitioners.

Accordingly, the present petition is dismissed, however, with liberty to avail the remedy of filing a revision petition against the impugned order dated 6.3.2013 before the Sessions Judge. It is made clear that in case the petitioners approach the revisionary Court within one month from the date of receipt of a certified copy of this order, the limitation shall not come in their way.

April 28, 2016
AK

(HARI PAL VERMA)
JUDGE