

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19987 of 2016
DECIDED ON: June 02, 2016

KAMALJIT SINGH AND ANOTHER

....PETITIONERS

VERSUS

SATNAM SINGH

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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?

Present: Mr. Ved Parkash, Advocate,
for the petitioners.

JASPAL SINGH, J.

Through this petition preferred under Section 482 of the Code of Criminal Procedure, petitioners-Kamaljit Singh and another have sought quashing of criminal complaint No.201/1/2012 dated 03.07.2012, titled as ***“Satnam Singh vs. Kamaljit Singh”*** under Section 406 IPC pending in the Court of Id. Judicial Magistrate for 07.07.2016 and the summoning order dated 18.04.2013 as well as order dated 23.05.2016 passed by Additional Sessions Judge, Jalandhar whereby the revision petition has been dismissed.

2. While developing his arguments, it has been contended by learned counsel for the petitioners that if the allegations unfolded in the

complaint as well as evidence led by complainant-respondent are presumed to be correct, no case under Section 406 IPC is made out. Neither, there is any entrustment of the alleged money to the petitioners nor the petitioners ever indulged in illegal activity for sending the complainant to abroad. The entrustment and breach thereof is *sine qua non* for the commission of offence under Section 406 IPC, which is lacking in the complaint. Moreover, the complaint was also lodged by the respondent to the police, which was inquired into and finding the allegations contained therein to be false, it was filed. While lodging the aforesaid complaint, all these material facts have been suppressed by the respondent.

3. Moreover, there is nothing to establish that either of petitioners was engaged in travelling agency. As per the allegation payment of ₹6.50 lacs was made to the petitioners at their house, which obviously is a residential one. It is suggestive of the fact that petitioners were not having or running any travel agency. Even otherwise, there is nothing in the complaint or the evidence that how a huge sum of ₹6.50 lacs was arranged by respondent-complainant. All these facts have been ignored and disbelieved and were not taken into consideration by the Id. Magistrate while passing the summoning order. Similarly, Id. Additional Sessions Judge also failed to appreciate the aforesaid aspect while dealing with the revision petition. The petitioners are settled at Chandigarh since 1961, who originally belong to a village located in District Bathinda, whereas respondent hails from Jalandhar District. Thus in such a situation, the making of payment of huge amount and handing over a passport to the

petitioners as alleged by the complainant is not at all believable.

4. Learned counsel for the petitioners further contends that the respondent also lodged a complaint on the similar allegations to the Senior Superintendent of Police, Jalandhar (Rural) against the petitioners, which was thoroughly inquired into by Harjinder Singh, SI of AHTC, Economic Offences Wing, Jalandhar, which was found to be false. The recommendations made by Sub Inspector in this regard were also accepted and consequently, complaint was filed. Since, from the contents of the complaint as well as the evidence brought on record by the complainant, no cognizable offence is disclosed, the complaint as well as summoning order are liable to be quashed.

5. This Court has given an anxious thought to the submissions made by learned counsel for the petitioners but finds the same to be without any legal and factual substance.

6. As far as the conducting of inquiry by Sub Inspector and consigning of the complaint by SSP Jalandhar (Rural), is concerned, it does not debar or preclude the filing of the regular complaint before the Id. Magistrate. The Magistrate has to consider the allegations levelled in the complaint as well as the evidence adduced in support thereof, independently. The report of inquiry conducted by the police has no binding effect upon the court dealing with criminal complaint. At the stage of summoning, the court is not to see whether the allegations contained in the FIR or the complaint were correct or not. The court is only to see whether from the allegations contained in the complaint or FIR, an offence

is made out or not. Moreover, the correctness or falsity of the allegations in the complaint has not to be seen by the Court while dealing with petition under Section 482 Cr.P.C. and that can only be seen during trial.

7. Adverting to the facts and circumstances of the case in hand, all the pleas taken in this petition can be termed to be a defence, which can only be established by the petitioners during the course of trial. To buttress this observation, we can have the reference of the pronouncements of Hon'ble Apex Court captioned as "***Indian Oil Corporation vs. NEPC India Ltd.***", 2006(3) RCR (Criminal) 740 and "***State of Orissa vs. Saroj Kumar Sahoo***", 2006(1) RCR (Criminal) 324, which have been subsequently relied upon by the Hon'ble Supreme Court in case "***Swaran Singh and others vs. State through Standing Counsel and another***", 2008 (4) RCR Criminal 74.

8. Even a glance at the complaint as well as the evidence clearly transpires that it discloses the commission of offence falling within the purview of Section 406 IPC. Thus, no ground is made out for quashing either the complaint or the impugned orders.

9. In the light of what has been discussed above, this Court does not find any merit in the instant petition. Resultantly, the same is dismissed. However, it is made clear that any observation made in this order shall have no binding on the merit of main case.

June 02, 2016
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(JASPAL SINGH)
JUDGE