

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

**Crl. Misc. No. 24871 of 2015(O&M)
Date of decision : 05.04.2016**

Bhagwan Singh & Ors.

... Petitioners

versus

State of Punjab & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Present: Mr. G.S. Sandhu, Advocate
for the petitioners.**

Mr. Deep Singh, AAG Punjab.

**Mr. Jagjit Singh, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

The petitioners are seeking quashing of complaint filed by respondent No.2 pending before Sub Divisional Judicial Magistrate, Sultanpur Lodhi and consequent proceedings therein, including summoning order dated 08.09.2014 vide which they were summoned to face trial under Sections 323, 324, 148 and 149 IPC.

The facts which emerge from the file are being noticed first.

Respondent No.2 got FIR No. 120 dated 19.07.2010 registered against the petitioners complaining commission of

offence punishable under Sections 323, 354, 148 and 149 IPC at Police Station Sultanpur Lodhi. The record shows that in the FIR the police submitted the cancellation report. Dis-satisfied with it, respondent No.2 instituted a complaint in the Court against the petitioners and one Rajanbir Singh alleging therein that on 13.07.2010 she along with her nephew Satnam Singh had gone to their fields. Bhagwan Singh, Harjit Singh, Gurmeet Singh, Amrinder Singh, Jarnail Singh, Rajanbir Singh, Swaran Singh and 15/20 unknown persons armed with weapons were present there and assaulted her and attempt was made to outrage her modesty. When Satnam Singh intervened, then Raje inflicted injury on his head. They raised noise, upon which Mohinder Singh and Jagtar Singh came to their rescue.

By way of preliminary evidence, the complainant stepped into the witness box as CW4. She examined Satnam Singh and Mohinder Singh; Dr. Atul Rattan proved the MLRs of injured Ranjit Kaur and Satnam Singh.

The trial Court found that no case under Section 354 IPC was made out and summoned the petitioners and Rajanbir Singh under Sections 323, 324, 148 and 149 IPC.

Impugning the complaint and the summoning order, the instant petition has been filed.

Learned counsel for the petitioners had urged that after investigation, the FIR lodged by respondent No.2 was found to be false and cancellation report was filed and the complaint was filed with malafide intention to harass the petitioners at the

instance of Nirmal Singh etc. against whom the petitioners had filed an application before the SDM Sultanpur Lodhi about blocking of the water course. He had further urged that the dispute between the parties was civil in nature and by twisting and concealing the true facts, the complaint was filed in the Court. It was urged that a civil suit for injunction had been filed by petitioner Gurmeet Singh, wherein respondent No.2 was one of the defendants. According to him, the summoning order was passed without application of mind.

Reply by respondent No.2 was filed and an objection regarding maintainability was taken that the petitioners had failed to avail the alternative remedy of revision. Learned counsel for the complainant had submitted that the petitioners being influential persons had managed the cancellation report and the trial Court had rightly summoned the petitioners. It was urged that the grounds on which the petitioners had sought quashing were disputed questions which could not be considered in a petition under Section 482 Cr.P.C.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

In the considered opinion of this Court, the petition deserves outright dismissal only on the ground that they had failed to avail the alternative remedy of questioning the propriety and legality of summoning order by filing the statutory revision before the Sessions Court. Learned counsel was asked first to address on the maintainability of the petition, but he failed to

address on the issue. His main stress was that in exercise of powers under Section 482 Cr.P.C., the Court has inherent powers to quash the proceedings.

The facts of the case are not such that warrant interference of this Court in exercise of powers under Section 482 Cr.P.C. The powers under Section 482 Cr.P.C. have to be exercised sparingly and with circumspection, that too in rarest of rare cases. Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

"105. 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.”

In **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, AIR 2005 SC 9**, the Hon’ble Supreme Court referred to many judgments on the point and observed as follows:

“The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would

not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. It if appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that even there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.”

Similar view point has been reiterated by the Hon'ble Apex Court in **State of Madhya Pradesh v. Awadh Kishore Gupta , (2004) 1 SCC 691**

The grounds on which the petitioners are seeking

quashing are disputed questions of fact. The complaint cannot be dismissed only because the police had filed the cancellation report. If such a recourse is permitted, then it amounts to giving unfettered powers to the police that would render all complaints remediless. The police in the enquiry report, as reproduced in petition, had admitted that at the time of removal of soil from water course, there was exchange of hot words between the parties and no cognizable offence was found. It is a matter of evidence as to in what manner the occurrence had taken place. The pleas that the dispute is of civil nature and that the petitioners had been made scapegoats on account of their alleged rivalry with Nirmal Singh are also matter of evidence and no findings in this regard can be recorded in these proceedings. Any observations made by this Court may prejudice either of the parties. The case does not fall under any of the guidelines, referred to above, warranting interference by this Court in exercise of powers under Section 482 Cr.P.C.

No ground for quashing is made out. Dismissed. However, whatever has been said hereinabove is without prejudice to the case on merit. The petitioners will be at liberty to raise all the pleas before the appropriate forum and at the appropriate stage.

The parties are directed to appear before the trial Court on 11.04.2016, who shall proceed with the case in accordance with law.

April 05,2016

Jiten

**(ANITA CHAUDHRY)
JUDGE**