

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-30149 of 2015

Date of Decision: September 19, 2016

Mamatjit Kaur and others

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Inderjit Sharma, Advocate
for the petitioner.

Mr. Jashanpreet Singh, AAG, Punjab.

None for respondent No.2.

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M.M.S. BEDI, J. (ORAL)

After going through the facts and circumstances of this case, I am of the considered opinion that the complaint filed by respondent No.2 is the result of matrimonial dispute between the complainant- respondent No.2 and her husband Ramesh Singh. The trial Court had, after the preliminary evidence, formed an opinion that the ingredients of any offence alleged were not made out and refused to summon the petitioners and dismissed the complaint. The revisional Court without issuing notice to the petitioners has set aside that order vide order dated April 20, 2015 directing the Magistrate to proceed with the case by observing that prima facie evidence of the

complainant and witness, sufficient to proceed with the complaint was there on record.

In view of the directions of the revisional Court, the trial Court has formally issued summoning orders. The patent illegality in the order passed by the order of the revisional Court is that he has passed a prejudicial order against the petitioners without issuing notice in contravention of the provisions of Section 401 (2) Cr.P.C. read with Section 397 (1) Cr.P.C. Prejudicial order has been passed against the petitioners without giving an opportunity of being heard personally or by pleader. The order annexure P-3 passed by the Additional Sessions Judge, dated April 20, 2015 is hereby set aside on said ground. The only jurisdiction with the revisional Court was to determine the legality and propriety of the order on appreciation of material on the record.

The summoning Court has not gone through the statements of complainant as CW1, CW2 Satnam Singh, CW3 Puran Singh and CW4 Sewa Singh. The order passed by the learned Magistrate dated July 14, 2015 is just a compliance of the order of the Additional Sessions Judge.

In view of the said circumstances, the order summoning the petitioners as accused deserves to be set aside.

I have perused the order dated June 15, 2013 passed by Judicial Magistrate Ist Class dismissing the application of the complainant for summoning by observing as follows:-

“6. Perusal of the contents of the complaint and Statement of complainant Sukhwant Kaur clearly reveals that she has stated that a matrimonial litigation is already

pending between inter-se her husband and her in-laws and she has simply levelled vague allegations in her petition as well as in her statement regarding abusing by the accused when she was coming out of the Court and another incident dated 27.2.2010 in the evening when she has alleged Ramesh Singh alongwith Sarabjit Singh and one unidentified person entered into her house and caused her injuries. He has not placed on record any medical regarding that incident whereby establishing on record that some injuries were caused to her. Even otherwise the allegations are with respect to Ramesh Singh, Sarabjit Singh, Manjit Kaur and Mamatjit Kaur are too vague and there is nothing against Manjit Kaur and Mamatjit Kaur who are sister of her husband and admittedly a criminal litigation is pending between complainant and her husband. Admitted litigation pending intersee parties itself establishes and proves strange relations intersee them. The allegations with regarding to the incident dated 27.2.2010 are quite vague and not supported by any medical evidence nor there is any explanation as to why sisters of husband of complainant i.e. No.2 and 3 are roped into when they were not present at the time of alleged incident as per the statement of complainant as well as contents of the complaint. No application is placed on record which was

marked with police by complainant. Possibility of false implication of the parties in the criminal complaint under these circumstances cannot be ruled out in pursuance of the strained relations among them. Complainant herself while stepping into witness box is silent with regarding to any role played by Manjit Kaur and Mamatjit Kaur in alleged incident dated 27.2.2010 which occurred around 11.30 p.m. in her house. The allegations levelled in the complaint and witnesses examined in support of those does not constitute any substantiate offence and quite vague enough to cause doubt in their version.

7. Taking into totality the pleadings of the complaint and the evidence considered in the light of guidelines of Apex Court in M/s Pepsu Foods Ltd. Vs. Special Judicial Magistrate (SC) 1998 AIR (SC) 128, discussed in the foregoing paras, I am of the considered view that no ingredients of any offence but prima facie even made out from the allegations and evidence on record. Accordingly, the present complaint stands dismissed. File be consigned to the Judicial Record Room, Gurdaspur.”

The above said order passed on appreciation of preliminary evidence has been passed but the revisional Court has not passed detailed order to set the same aside, after hearing petitioners.

The petition is allowed. The order annexure P-3 passed by the Additional Sessions Judge, Gurdaspur and the order dated July 14, 2015, annexure P-4 passed by the Magistrate are hereby set aside. The revisional Court is directed to reconsider the matter after hearing the petitioners and pass appropriate order in accordance with law. The petitioners will appear before the revisional Court on November 5, 2016 for disposal of the revision petition after hearing both the parties.

September 19, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.