

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-35818 of 2014 (O&M)
Date of Decision: 30.9.2016**

Jasbir Kaur

.....Petitioner

Versus

Deepika Parhar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Mandeep S.Sachdev, Advocate
for the petitioner.

Mr. Varun Baath, Advocate
for the respondent.

ANITA CHAUDHRY, J(ORAL)

In this petition filed under Section 482 Cr.P.C., the petitioner is seeking quashing of the complaint and the summoning order.

The petitioner claims that the complaint was liable to be quashed on the short ground that on the same set of allegations, the respondent had filed a complaint against the petitioner in which investigation was conducted and the petitioner was found innocent and challan was presented against Harminder Singh and Gurcharan Singh and subsequently on the same set of allegations, the complaint was filed. It was pleaded that the petitioner was unmarried and was working as a Manager in a Pharmaceutical company at Bangalore and she was totally financially independent and had nothing to do with the matrimonial affairs of Harminder Singh. It was pleaded that an application was moved under Section 319 Cr.P.C. for summoning the petitioner as additional accused

which was dismissed by the trial Court.

In the reply filed by the private respondent it was pleaded that the trial Court had issued process in the complaint case as it found that *prima facie* grounds existed for summoning the accused. It was pleaded that the complaint had to be filed since the police had conducted a shoddy investigation and no explanation had been given as to why the petitioner was not challaned and the order passed on the application under Section 319 Cr.P.C. was on misreading of facts and the petitioner had failed to avail the remedy of revision and directly filed the petition under Section 482 Cr.P.C. It was pleaded that principle of *res judicata* in criminal cases cannot be invoked. It was pleaded that incomplete challan had been filed and though, the prayer for summoning the additional accused had been declined, there was sufficient evidence.

Counsel for the petitioner has urged that the complainant had earlier lodged an FIR and investigation was conducted and the petitioner was not challaned and still not satisfied, an application under Section 319 Cr.P.C. was filed by the respondent which was dismissed on 26.10.2012 and that order Annexure P-5 was not challenged and the trial is at the final stages. It was urged that the complainant did not disclose that she had also lodged an FIR and that fact was concealed from the Court which had summoned the petitioner. It was urged that it was only mentioned that a complaint was given to the Commissioner of Police but no action had been taken. Counsel has referred to Para 10 of the complaint (Annexure P-1). It was urged that if there is an FIR and a complaint on the same facts, then the provisions of Section 210 Cr.P.C. have also to be followed and these proceedings were an abuse of process of law. Reliance was placed upon

'Savera Sidhu versus Harleen Sidhu and another 2011(2) R.C.R. (Criminal) 442' and 'Kuldip Raj Mahajan versus Hukam Chand 2008 (1) R.C.R. (Criminal) 379'.

On the other hand, the submission on behalf of the respondent was that the Magistrate had issued the process after satisfying itself that there were sufficient grounds for proceeding and they could raise all their defence before the Court below and the instant petition was not maintainable. Reliance has been placed upon **'Lajwanti @ Bimla versus State of Haryana and others 2014(1) R.C.R. (Criminal) 929'**.

Admittedly, the complainant had lodged an FIR and investigation was completed and the challan was filed. The police failed to challan the petitioner i.e. the sister-in-law. After the statement of the complainant, an application under Section 319 Cr.P.C. was filed which was dismissed on 26.10.2012. The prayer for summoning the sister-in-law was declined. The said order was not challenged by the complainant. The complainant filed a complaint impleading her husband, his father and the sister-in-law in July 2012 and the accused were summoned in May 2013. The complainant did not disclose in her complaint that on the basis of a complaint lodged with the police, the FIR had been registered. She did not bring this fact to the notice of the Court even in her statement made to the Court. The summoning order was passed on 2.5.2013 i.e. much after the dismissal of the application under Section 319 Cr.P.C. Since there was an FIR registered on the same allegations, the Court was required to take recourse to the provisions contained under Section 210 Cr.P.C. The complainant did not apprise the Court of that position. The complainant could not file a separate complaint and summon the petitioner.

The petitioner had been named in the FIR but the police had not filed the challan against her. The petitioner was not summoned under Section 319 Cr.P.C. A separate complaint could not have been filed. After the dismissal of the application under Section 319 Cr.P.C., the impugned summoning order could not have been legally passed. The proceedings qua the petitioner are *mala fide* and an abuse of process of law. The complaint is a result of *mala fide* as the complainant was nursing a grudge.

Since the criminal prosecution of the petitioner is an abuse of the process of the Court and invoking the inherent power and corresponding duty to prevent abuse of the process of the Court, the complaint and the subsequent proceedings qua the petitioner are quashed.

The instant petition is allowed.

**(ANITA CHAUDHRY)
JUDGE**

September 30, 2016
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No