

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

CRR No.1877 of 2011 (O&M).  
Decided on:-December 23, 2016.

Suresh Pal Singh Parmar.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

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

Argued by:- Mr. Sunil Panwar, Advocate  
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Karanvir Singh Khehar, Advocate  
for respondents No.2 and 3.

**HARI PAL VERMA, J.**

Petitioner has filed the present revision petition against the order dated 29.4.2011 passed by learned Additional Sessions Judge, Panchkula, whereby revision petition filed by respondents No.2 and 3, namely, Anita Chaudhary and her husband Surender Kumar Chaudhary against the summoning order dated 30.11.2009 passed by learned Judicial Magistrate 1<sup>st</sup> Class, Panchkula, was accepted and accordingly the summoning order was set aside.

Briefly stated, the petitioner-complainant had filed a complaint under Sections 499, 500, 109 and 120-B IPC against the respondents-accused No.2 and 3. As per the complaint, the complainant was working as

District Attorney in District Court, Panchkula whereas respondent No.3 Surender Kumar Chaudhary was working as a Lecturer in Chemistry Department in Government College, Sector-1, Panchkula and was junior to the wife of complainant, namely, Rukmani Parmar. Respondent No.2 Anita Chaudhary is wife of respondent No.3 and was working as Assistant Director in the office of Commissioner, Higher Education, Haryana whereas Charan Dass Walia (now deceased), who was arrayed as accused No.3 in the complaint, was father of respondent No.2 Anita Chaudhary and father in law of respondent No.3 Surender Kumar Chaudhary.

In the month of February, 1999, a complaint was filed by Dr. Narender against respondent No.3 Surender Kumar Chaudhary wherein it was alleged that he had filed a false affidavit with regard to Giandeep Cooperative Group Housing Society, Panchkula deposing therein that neither he nor his spouse or children own any house, flat, plot etc. in their name in the Urban Estate, HUDA, Panchkula. The said complaint was marked to CIA Staff for enquiry and during the said enquiry, respondent No.3 had approached the petitioner-complainant, who was working as Deputy District Attorney to help him in the pending enquiry. But the petitioner refused to extend any help to him. Later on, on the basis of enquiry, an FIR was registered against the respondent No.3 on the basis of opinion sought from the petitioner-complainant. Therefore, the accused No.3, namely, Charan Dass Walia had some grudge against the wife of the petitioner when she took the charge as Head of the Department from respondent No.3.

Accordingly, the wife of petitioner had restrained respondent No.3 from interfering in the department functioning unnecessarily. In this manner, enmity between the parties cropped up. Respondent No.3 started harassing the wife of the petitioner by adopting illegal means for which the authorities had verbally warned the accused to be careful. During the year 2007-08, respondent No.3 instigated Charan Dass Walia (accused No.3, as referred in the complaint), who was father of respondent No.2 Anita Chaudhary and got a complaint lodged against the petitioner and his wife before the various authorities including ADGP (Crime), DGP, Haryana, Education Minister, Haryana and the Chief Minister, Haryana to defame and damage the reputation of the petitioner and his wife in the eyes of friends, colleagues, official circle and the public at large.

On 27.6.2007, all the accused had made a false complaint against the petitioner through accused Charan Dass Walia (now deceased). After detailed enquiry, the allegations made by the accused were found to be false. DSP Rajesh Duggal had concluded that respondent No.3 used to write/draw unworthy words and figures in the classroom of the Department of Chemistry where the wife of complainant used to take classes. It was alleged that the respondent No.3 caused unnecessary obstruction in the department work and mentally harassed the wife of the petitioner-complainant from time to time.

The accused thereafter had conspired again to defame the complainant and his wife and had resorted to file a false complaint on

17.7.2007 to ADGP, Haryana through accused Charan Dass Walia. The complaint was marked to Superintendent of Police, Panchkula and during the enquiry, said Charan Dass Walia himself made a statement to the police that since Rukmani Parmar (wife of the petitioner-complainant) had been transferred, there was no dispute. After the enquiry, the said complaint was filed by the Superintendent of Police.

Despite the DGP enquiry on 22.4.2008, all the respondents-accused conspired with each other and instigated accused Charan Dass Walia to file another complaint to the Education Minister. Accused Charan Dass Walia had only stated that no action was taken by the police on his earlier complaint. However, the Enquiry Officer, S.S. Phulia, who was Principal, Government College, Ambala upheld the allegations of the wife of the complainant-petitioner to be true as the same were never refuted by him. Charan Dass Walia had filed another false complaint on 10.3.2008 to the Chief Minister, Haryana which was marked to DGP, Haryana for enquiry. However, DGP, Haryana filed the same as the complainant had already been enquired into by the police. The petitioner remained posted as Deputy District Attorney in the office of S.P. Panchkula from September, 1996 to August, 2003 and during this posting, he had earned an outstanding service record. Before the filing of complaint by accused Charan Dass Walia, the complainant had a good reputation in the eyes of all the officers in the Police Department. He was also posted as District Attorney in the office of DGP, Haryana from March 2003 to June, 2007 and during this period, he earned a

good reputation and respect in the eyes of senior IPS officers and other colleagues. However, when the false complaint submitted by Charan Das Walia was received in the office of DGP, Haryana and dealt by different officials, all the officials started talking about the allegations made against the petitioner-complainant by accused Charan Dass Walia and they started ignoring the petitioner in the office. In this manner, image and reputation of the petitioner was lowered down in the eyes of colleagues and senior officers of the department.

The petitioner-complainant supported his complaint with documents Ex.C1 to C15. The complainant examined himself along with Kamla Devi working in the complaint Branch Office of S.P., Panchkula; HC Mukesh Kumar No.43, Ambala, Complaint Branch, DGP Office; Surender Pal Singh Chehal, Deputy District Attorney, DGP Office, Panchkula and Constable Jarnail Singh, DGP Office, Haryana.

Vide order dated 30.11.2009, learned Judicial Magistrate 1<sup>st</sup> Class, Panchkula had summoned the accused i.e. respondents No.2 and 3 to face trial.

Against the summoning order dated 30.11.2009, the accused-respondents No.2 and 3 had filed a revision petition before the Court of Session and vide order dated 29.4.2011, learned Additional Sessions Judge, Panchkula had accepted the revision petition and set aside the summoning order dated 30.11.2009 passed by learned Magistrate.

It is in these circumstances, the petitioner-complainant, is

aggrieved against the order passed by learned Additional Sessions Judge, Panchkula, and has filed the present revision petition.

Learned counsel for the petitioner has submitted that Charan Dass Walia, who was arrayed as accused No.3 in the complaint, had died in the year 2009. He has argued that unless there is a perversity with the trial Court judgment, the revisionary Court cannot interfere with the positive findings recorded by the trial Court which are based on material facts. The revisionary Court has interfered in the matter without there being any illegality in the order of summoning. The impugned order passed by the revisionary Court at the stage of summoning is illegal and not permissible as it is only during trial, the respondents may, if available, take defence of the 8<sup>th</sup> and 9<sup>th</sup> exceptions attached to Section 499 IPC. So long as the version of complainant is not rebutted, it is to be considered as true. The defence of the respondents-accused cannot be considered at the stage of summoning. The trial Court while summoning the accused had formed an opinion on the basis of evidence and, therefore, no interference was warranted.

Learned counsel for the petitioner has further argued that assuming for the sake of arguments, the interference was warranted by the revisionary Court, the fault of the Court cannot prejudice the complainant and the best course left to the revisionary Court was to remand the case. At the stage of summoning, the defence of accused is not to be examined. He has referred ***State Farm Corporation of India Limited Versus Nijjer Agro Foods Limited and others 2005(12) SCC 502*** to contend that at the stage of

summoning, the Court has to see whether a prima-facie case is made out against the accused or not. But when the High Court has interfered in the revisionary jurisdiction and examined the defence on merit and has allowed the criminal revision petition reversing the decision of the Magistrate, the Supreme Court has observed that it was not a stage to examine the defence of respondents. Reliance has also been placed upon the judgment of this Court in ***Vir Sanghvi Versus State of Haryana 2006(1) RCR (Criminal) 115*** to state that the issue as to whether contents of the news item are true and were correctly published and whether or not there was any complicity of the petitioners behind publication thereof, are disputed questions of fact which can be adjudicated on appreciation of evidence to be led by both the parties. He has referred to para 11 of the said judgment, which reads as under:

*“On a plain reading of the news item reproduced above, there can be no exception and/or denial to the likelihood of causing some adverse impact on the complainant's reputation, political image and social status. However, the issue as to whether contents of the news item are true and were correctly published and/or the same were based upon merely on the statement made by Balbir Singh Pal in a press conference and whether or not there was any complicity of the petitioners behind publication thereof, are disputed questions of fact which can be adjudicated on appreciation of evidence to be led by both the parties. Neither any final opinion in relation to these issues can be formed on the basis of scant material on record nor its formation would be expedient and/or desirable at this stage. Regular trial is, thus, inevitable.”*

Reliance has also been made to the judgment in the case of ***Jeffrey J. Diermeier and another Versus State of West Bengal and another 2010(3) RCR (Criminal) 183*** wherein, in a case of quashing of criminal complaint on account of charge of defamation of complainant under Section 500 IPC, the trial Court had issued summoning and the accused had sought quashing of the complaint on the ground that imputations were made in good faith and no offence was made out as provided in the 10<sup>th</sup> Exception of Section 499 IPC, the Apex Court had dismissed the petition by observing that it is neither feasible nor possible to lay down a rigid test for deciding whether an accused person acted in “good faith” and for “public good” under the said Exception. Such like question has to be considered on the facts and circumstances of each case having regard to the nature of imputation made. He has also relied upon another judgment of Hon'ble Supreme Court in ***Balraj Khanna and others Versus Moti Ram 1971 AIR (SC) 1389*** to contend that the question of applicability of Exception to Section 499 IPC can arise only after commencement of trial and at the stage of enquiry whether prima-facie case is made out or not. The question of applicability of Exception to Section 499 IPC as well as other defences that may be available to the accused will have to be gone into only during the trial of the complaint. Thus, learned counsel for the petitioner has justified the order of summoning passed by learned Magistrate and has sought setting aside of the order passed by the revisionary Court.

On the other hand, learned counsel for the respondents No.2 and

3 has argued that the complaint made by one Narender remained untraced and the DSP, who looked into said complaint exonerated the respondents. But the petitioner had opened the case of Narender without any approval, despite that he was not competent to re-open it. However, he justified the order passed by the revisionary Court and has submitted that there was no material with learned Magistrate to issue summoning. The trial Court must not issue summoning in a mechanical and casual manner as it prejudices the interest of the accused. He has further argued that the complaint was never moved by respondents No.2 and 3, namely, Anita Chaudhary and Surender Kumar Chaudhary, but the same was moved by Charan Dass Walia, who had already died in the year 2009. He was father of respondent No.2 and father-in-law of respondent No.3. Even if a complaint has been made to the superior officer, it does not fall within the ambit of term “defamation”. He has referred to Sections 190 and 204 Cr.PC and argued that firstly the Magistrate has to satisfy himself that the allegations made in the complaint are specific and it is only thereafter, he can issue summoning. The order passed by the Magistrate nowhere shows applicability of mind as what is the evidence against the accused so as to issue summoning.

Learned counsel for respondents No.2 and 3 has referred to the judgment of Hon'ble Supreme Court in ***GHCL Employees Stock Option Trust Versus Kranti Sinha (2013) 4 SCC 506*** to contend that when no specific role is assigned to the accused in respect of the alleged offences and the summoning is issued on the basis of general and bald allegations only,

such like order cannot sustain before the scrutiny of law. When the learned Magistrate while issuing summoning has not recorded his satisfaction about prima-facie case against the respondents-accused and the role played by them in the offence, issuance of such summoning was held to be illegal and amounts to abuse of process of law. It is obligatory on the part of the Magistrate that while passing the order of summoning it must reflect that he applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima-facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record. Reliance has also been placed upon the judgment of Hon'ble Rajasthan High Court in ***Sugan Kanwar Versus Rakesh 2007(1) RCR (Criminal) 349*** and the judgment of this Court in ***Kamlesh Kaur Versus Lakhwinder Singh and another 2009(4) RCR (Criminal) 663***.

I have heard learned counsel for the parties.

Learned Magistrate, while issuing summoning of respondents No.2 and 3 vide order dated 30.11.2009 has ordered as under:

*“Therefore, after going through the file very carefully and analyzing the documents placed on record by the complainant supporting of his complaint, filed under Section 499/500/109 IPC and 120-B IPC, I find a prima facie case made out against all the accused and hereby consider it to be a fit case to summon all the accused i.e. Smt. Anita Chaudhary, Assistant Director, Office of Commissioner, Higher Education, Haryana, Shiksha Sadan, Sector-5, Panchkula, Sh. Surender Kumar*

*Chaudhary, Channel Manager, College Studio, District Institute of Education and Training, Sector-20, Panchkula on filing of PF, list of witnesses and copies of complaint for 03.02.2010.”*

So far as judgments i.e. ***State Farm Corporation of India Limited Versus Nijjer Agro Foods Limited and others (supra)***, ***Vir Sanghvi Versus State of Haryana (supra)***, ***Jeffrey J. Diermeier and another Versus State of West Bengal and another (supra)*** and ***Balraj Khanna and others Versus Moti Ram (supra)*** cited by learned counsel for the petitioner are concerned, the facts of these cases are not applicable to the facts and circumstances of the present case. The accused No.3 as referred in the complaint, was admittedly father-in-law of respondents No.2 and 3 and he had made certain complaints to the authorities which were relevant so far as the employment of his daughter and son-in-law are concerned. Moreover, said Charan Dass Walia, who stated to have made complaints to the authorities, had died in the year 2009. Therefore, it is not the case of the complainant-petitioner that respondents No.2 and 3 have made complaints to the authorities against the petitioner. As such, the cited authorities are not attracted in the peculiar facts and circumstances of the present case.

The process of summoning cannot be initiated in casual manner. The learned Magistrate while issuing summoning has to assess the culpability of an accused as summoning of accused in criminal case is a serious matter. This Court finds that while issuing summoning, learned Magistrate has not appreciated the fact that on the relevant date when process of summoning was issued, Charan Dass Walia had already died. For

the sake of repetition, it is said Charan Dass Walia, who initiated complaint against the petitioner which led to filing of the complaint by the petitioner. Thus, the authorities cited by learned counsel for the petitioner do not apply to the facts and circumstances of this case more particularly when Charan Dass Walia (who was arrayed as an accused in the original complaint) had moved complaints to the authorities concerned highlighting the grievances of respondents No.2 and 3. Therefore, the case of the respondents-accused falls within the Exceptions 9<sup>th</sup> and 10<sup>th</sup> attached to Section 499 IPC. The administrative complaints made by the aggrieved person cannot outrightly be accepted as defamation.

It is not in dispute that the very complaint which has formed the basis of summoning by learned Magistrate was made by Charan Dass Walia, who was arrayed as accused No.3 in the original complaint. He has died in the year 2009. The copy of said complaint was made to DGP, Haryana which was marked to DSP Flying Squad and on enquiry, it was found that the allegation was false. Ex.C6 is again an application moved by Charan Dass Walia addressed to ADGP, Crime Branch and Ex.C10 is the application made to the Education Minister, Haryana. These applications were made to the authorities who were relevant to entertain such complaints and a prudent person would address such complaint to such authorities. The accused have claimed Exceptions 8<sup>th</sup> and 9<sup>th</sup> of Section 499 IPC, which read as under:

*“Eighth Exception.—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have*

*lawful authority over that person with respect to the subject-matter of accusation.*

***Ninth Exception.***—*Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good."*

Admittedly, the accused No.3 Charan Dass Walia was father of respondent No.2 Anita Chaudhary. It is not unusual for a father to make such complaints if he feels that his daughter or ward has some problem. So, it can hardly be accepted that on these facts a case for defamation is made out. The action of accused does not refer to any publication which may harm the reputation of the complainant in any manner. The accused No.3 had just sought to exercise his right for enquiry against the conduct of the petitioner-complainant and invited the attention of the appropriate authority. Moreover, he had already died in the year 2009 and, therefore, the proceedings against him were already dropped during pendency of the complaint before the trial Court.

Further more, the order passed by learned Magistrate, which has been reproduced above, is too sketchy and shows complete non-application of mind. There is not even a slightest observation by the Magistrate that what are the factors/evidence available on record which led to summoning of the respondents-accused for the offences committed by them.

In ***GHCL Employees Stock Option Trust's case (supra)***, the

Apex Court has observed that when the entire complaint contains bald and vague allegations against the respondents and the Magistrate having not recorded his satisfaction about prima-facie case against the respondents, such summoning cannot sustain. The relevant observations made by the Apex Court in para Nos.14 to 19 of the said judgment are reproduced as under:

“14. *Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of 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 the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.*

15. *In the case of **Madhavrao Jiwaji Rao Scindia and Another Etc. vs. Sambhajirao Chandrojirao Angre and Others Etc. AIR 1988 SC 709**, this Court held as under:*

“7. *The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the*

*court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”*

16. *In the case of **Punjab National Bank and others vs. Surendra Prasad Sinha AIR 1992 SC 1815**, a complaint was lodged by the complainant for prosecution under Sections 409, 109 and 114 IPC against the Chairman, the Managing Director of the Bank and a host of officers alleging, inter alia, that as against the loan granted to one Sriman Narain Dubey the complainant and his wife stood as guarantors and executed Security Bond and handed over Fixed Deposit Receipt. Since the principal debtor defaulted in payment of debt, the Branch Manager of the Bank on maturity of the said fixed deposit adjusted a part of the amount against the said loan. The complainant alleged that the debt became barred by limitation and, therefore, the liability of the guarantors also stood extinguished. It was, therefore, alleged that the officers of the Bank criminally embezzled the said amount with dishonest intention to save themselves from financial obligation. The Magistrate without adverting whether the allegations in the complaint prime facie make out an offence charged for, in a mechanical manner, issued the process against all the accused persons. The High Court refused to quash the complaint and the matter finally came to this Court. Allowing the appeal and quashing the complaint, this Court held as under:*

*“5. It is also salutary to note that judicial process should not be an instrument of oppression or needless*

*harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta.”*

17. *In the case of **Maksud Saiyed vs. State of Gujarat and Others (2008) 5 SCC 668**, this Court while discussing vicarious liability observed as under:*

*“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned*

*Magistrate failed to pose unto himself the correct question viz., as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”*

18. *From bare perusal of the order passed by the Magistrate, it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein. While ordering issuance of summons, the learned Magistrate concluded as under:*

*“The complainant has submitted that the accused Nos.2 to 6 are the directors of the company and accused No.7 is the secretary of the company and were looking after the day to day affairs of the company and were also responsible for conduct and business of the accused No.1 and some time or the other have interacted with the complainant.*

*I have heard arguments on behalf of the complainant and perused the record. From the allegations raised, documents placed on record and the evidence led by the*

witnesses, *prima facie* an offence u/s 415, 409/34/120B is made out. Let all the accused hence be summoned to face trial under the aforesaid sections on PF/RC/Speed Post/courier for 2.12.2008.”

19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the *prima facie* case as against respondent Nos.2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is *sine qua non* for initiating criminal action against them. Recently, in the case of **M/s. Thermax Ltd. & Ors. vs. K.M. Johny & Ors. 2011 (11) SCALE 128, & ors.** while dealing with a similar case, this Court held as under:

“20. Though Respondent No.1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No.1 – Company, who do not have any personal role in the allegations and claims of Respondent No.1. There is also no specific allegation with regard to their role.

21. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of ‘vicarious liability’ is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after

*the management and business of the appellant-Company.”*

In view of the above, this Court does not find any illegality, perversity or infirmity in the impugned order dated 29.4.2011 passed by learned Additional Sessions Judge, Panchkula as the summoning order dated 30.11.2009 is sketchy and vague and the same has been passed by learned Magistrate without any application of mind. Even otherwise, this Court finds that when Charan Dass Walia, who had initially made the complaint against the petitioner leading to filing of the complaint by the petitioner, has already died, the very purpose of summoning the accused has been diluted.

Therefore, the impugned order dated 29.4.2011 passed by learned Additional Sessions Judge, Panchkula is upheld and the present revision petition, being devoid of any merit, is dismissed.

**December 23, 2016**

Yag Dutt

**(HARI PAL VERMA)  
JUDGE**

Whether speaking/reasoned: ☒ Yes/No

Whether Reportable: ☒ Yes/No