IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44190-2015
DECIDED ON: FEBRUARY 02, 2016

HARVINDER KUMARI @ BINDU

.....PETITIONER

VERSUS

RAJ RANI

....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. Sanjeev Kumar Bawa, Advocate,
for the petitioner.

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JASPAL SINGH, J.

Through instant petition preferred under Section 482 of the Code of Criminal Procedure (for short, "Code"), Harvinder Kumari @ Bindu has sought quashing of complaint No. 342/1/2012, dated 07.11.2012, titled as ***"Raj Rani vs. Jawala and others",*** under Sections 406, 420 and 506-B IPC pending in the Court of Sh. Munish Garg, Judicial Magistrate, First Class, Jalandhar and all subsequent proceedings emanating from it as well as order dated August 18, 2015 (Annexure P-4) passed by Additional Sessions Judge, Jalandhar in CRR No.178 of 2014 challenging the summoning order dated 06.09.2013 (Annexure P-2).

2. The contention of learned counsel for the petitioner while

challenging the complaint dated November 07, 2012 (Annexure P-1) as well as summoning order dated September 06, 2013 (Annexure P-2) is that the impugned complaint is based upon conjectures and surmises and is a result of malice on the part of the respondent. All the proceedings arising from the complaint are result of non-application of judicious mind, which has caused prejudice to the petitioner. In fact, there is no evidence on record to prove that petitioner has ever committed any offence for which she has been summoned to face trial, who is a house wife and never joined any firm namely *"Jalandhar Capital Service Private Limited"*. Neither, she ever acted as a Director of the aforesaid firm nor she has any role to play in the company. She is also not Managing Director of the firm as has been alleged in the complaint and never participated in the business of the aforesaid firm. She also did not signed any document on behalf of the company or firm. Even various receipts, which have been placed on record Ex. C1 to C14 do not bear her signatures. She has been falsely implicated in this case for the sole reason to put pressure upon her to get money from her as well as from her relatives. She collected some information under the RTI and as per the information so received, she is not the member of the Board of Directors. All these factors have not been taken into consideration by ld. trial court while issuing the process against her. Moreover, the last transaction was on April 18, 2004 when the respondent remained unsuccessful to initiate any action for recovering the money within a period of limitation, she with ill-intention and with a malice motive lodged the complaint with the police in the year 2012. Moreover, after the expiry of a period of 3 years from the date of cause of action lastly accrued, ld. Magistrate was not competent to take cognizance and was being barred under Section 468 of the Code. The impugned complaint as well as summoning order are the classic example for misusing the provision of law as well as the abuse of the process of law and are thus, liable to be quashed. Moreover, the complainant has not approached the trial court with clean hands and did not intentionally disclose the lodging of the various complaints to the Commissioner of Police, Jalandhar, NRI Cell, SHO Police Station Model Town and to Anti Fraud Department of the Police. Complaints moved to the above referred authorities were thoroughly investigated by the police and, finding no substance therein, same were recommended to be filed. Since, the respondent is guilty of concealment of various glaring aspects, thus, she does not deserve any relief. Even otherwise, if the allegations contained in the complaint are taken to be true on its face value, the same do not constitute any offence punishable under the Indian Penal Code. Moreover, the malice is reflected in the contents of the complaint itself to harass the petitioner as well as to put pressure upon her to part with money, which is otherwise un-recoverable under the law.

3. While concluding arguments, it has been submitted by learned counsel for the petitioner that only factor coupled with each other belies the allegations unfolded by the respondent. As such, the complaint and summoning order are liable to be set aside/quashed.

4. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner.

5. Before proceeding further to decide the petition on merits, it would be apt and appropriate to mention here that the power of quashing criminal proceeding is required to be exercised very sparingly and cautiously and with circumspection and that too in the rarest of rare cases. That the Court will not

be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint. The complaint or the FIR can be quashed under the inherent jurisdiction of the High Court where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in its entirety do not prima facie constitute any offence or that the allegations made in the complaint/FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach at a conclusion that there is sufficient ground for proceeding against the accused. The another test for quashing the criminal proceeding is that where the criminal proceeding is manifestly attended with mala fide or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance.

6. But while adverting to the case in hand none of the aforesaid circumstances can be said to have been established in the instant case. There are clear and specific allegations in the complaint as well as the evidence adduced by the complainant in support thereof. Moreover, the mere fact that the given set of facts may make out purely a civil <u>wrong doers does not ipso facto</u> mean that no criminal proceedings can be initiated. Rather, the same can proceed simultaneously. Moreover, the various contentions put forth by the learned counsel for the petitioner during the course of arguments and reflected above are only the defence of the petitioner and the same can be raised by her and proved during the course of trial. Moreover, at the time of issuance of process against the person for initiating criminal proceedings only the allegations in the FIR or complaint as well as the documents adduced by the complainant in support thereof is required to be taken into consideration. No amount of

evidence can be adduced by the accused and can be taken into consideration to quash the FIR/complaint.

7. This court has gone through the various allegations unfolded in the complaint and is of the considered view that the allegations should constitute cognizable offence for issuance of process. At this stage, it cannot be said that the petitioner is being maliciously prosecuted or allegation on the face of it do no constitute any cognizable offence. This Court is of the considered view that there is no scope for quashing at this stage either the complaint or summoning order. As such, the instant petition being devoid of merit, is dismissed. However, the petitioner shall be at liberty to take all these pleas during the evidence before the ld. trial court.

8. In the light of what has been discussed above, the instant petition stands dismissed.

FEBRUARY 02, 2016 **(JASPAL SINGH)**
sonika **JUDGE**