

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

Crl. Misc. No.M-4568 of 2016
Date of Decision: 28.03.2016

Lajpat Sharma and othersPetitioners

Versus

State of Haryana and anotherRespondents

Crl. Misc. No.M-4569 of 2016

Pushpinder Sharma and anotherPetitioners

Versus

State of Haryana and anotherRespondents

Crl. Misc. No.M-4570 of 2016

Krishan KumarPetitioner

Versus

State of Haryana and anotherRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Randhir Singh Badhran, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

By this judgment of mine, three cases bearing **Criminal Misc. No.M-4568 of 2016**, **Criminal Misc. No.M-4569 of 2016** and **Criminal Misc. No.M-4570 of 2016** shall be disposed of as common question of law and facts are involved. However, for the sake of convenience, the facts are

being derived from ***Criminal Misc. No.M-4568 of 2016***.

This petition has been filed under Section 482 Cr.P.C for quashing of order dated 14.12.2015 passed by the Judicial Magistrate Ist Class, Panchkula, whereby, the petitioners have been summoned in complaint case No.193 dated 16.11.2011/01.07.2013 for offences punishable under Sections 148, 149, 323, 452 and 506 IPC as well as order dated 27.01.2016 passed by the Additional Sessions Judge, Panchkula in the revision petition filed by the petitioners, whereby, the revision petition has been dismissed and the order of summoning has been upheld.

Briefly stated, the facts of the case are that petitioners No.1 to 3 and complainant-respondent No.2 are neighbours and they shared a common wall between their House Nos.1316 and 1317, Sector 25, Panchkula, respectively. Due to certain differences arose between the parties, respondent No.2 filed a criminal complaint No.193 dated 16.11.2011, in which, petitioners were summoned to face trial vide order dated 14.12.2015 passed by the Judicial Magistrate Ist Class, Panchkula. Thereafter, petitioners challenged the above-said order by way of filing the revision petition before the Additional Sessions Judge, Panchkula, which was dismissed. The order of summoning and the order passed in the revision petition are subject matter of challenge in the present petition.

Learned counsel for the petitioners submits that the summoning order is totally non-speaking and no finding, whatsoever, has been recorded. The Judicial Magistrate Ist Class, Panchkula has passed the order of summoning only on the basis of statement recorded in the preliminary evidence and without any application of judicial mind, which is contrary to the ratio of judgments of Hon'ble the Apex Court as well as of this Court and settled proposition of law. Learned counsel further submits

that earlier also, the petitioners were summoned by the trial Court vide its order dated 28.11.2014. Subsequently, it was challenged by way of filing revision petition, whereby, the order of summoning was set aside and the case was remanded back to the trial Court with a direction to pass a fresh order after considering the inquiry report under Section 202 Cr.P.C but still the non-speaking order has been passed in a mechanical manner. Learned counsel also submits that the impugned order has been passed without taking into consideration the inquiry conducted by the police. It was the duty of the Summoning Court to apply its independent judicial mind after considering the inquiry report under Section 202 Cr.P.C.

Learned counsel for the petitioners has relied upon the judgment of Hon'ble the Apex Court in case ***M/s Pepsi Foods Limited vs Special Judicial Magistrate 1997(4) RCR (Criminal) 761*** in support of his arguments.

Heard the arguments of learned counsel for the petitioners and have also perused the impugned order of summoning as well as the order passed by the Revisional Court. I have also perused the report of inquiry conducted by the police and other documents available on the file including complaint and summoning order.

Admittedly, respondent No.2 filed a complaint against the petitioners and in her pre-summoning evidence, she examined Yasoda as CW-1, Renu Sharma as CW-2, Ravinder as CW-3, herself as CW-4 and Mukesh Malhotra as CW-5. The report under Section 202 Cr.P.C was also there before the trial Court but the trial Court disagreed with the same and issued process against the petitioners. The order of summoning was challenged by the petitioners by way of filing revision petition before the Additional Sessions Judge, Panchkula, which was also dismissed.

The order of summoning and order passed in the revision

petition has been challenged before this Court on the ground that the report under Section 202 Cr.P.C has not been considered by the trial Court and the order has been passed in a mechanical manner.

On perusal of order of summoning, it is clear that as per the report under Section 202 Cr.P.C., the entire controversy between the parties relate to a common wall and earlier both the parties were even arrived at a compromise that both the parties would make contribution of 50% each to repair the wall. The Investigating Agency found the case to be false as the alleged incident did not occur on 10.07.2011. Even though, no material was found on record for summoning of accused Nos.2 and 6 against any section but accused Lajpat Sharma, Aakash Sharma, Aashish Sharma, Pushpinder Sharma and Madan Lal Atri were summoned under Sections 148/149/323/452/506 IPC and accused-Krishan Kumar was summoned for offences punishable under Sections 148/149/323/354/452/506 of IPC. Thereafter, the Revisional Court also dismissed the revision petition filed by the petitioners by holding that no illegality or material irregularity calling for interference with the summoning order is found.

At the stage of taking cognizance and summoning the accused, the Summoning Court is to find out as to whether *prima facie* case has been made out for summoning the accused persons. The Summoning Court is not required to consider the defence version or materials or arguments or to evaluate the merits of the materials or evidence of the complainant. The Summoning Court is not to see at the time of summoning of accused as to whether the materials will lead to conviction or not. In case, the police has investigated into the allegations and found that there was no sufficient evidence for proceeding further, the Magistrate has power to differ and reject the report and to take cognizance

under Section 190 Cr.P.C and issue process to accused under Section 204 Cr.P.C. The matter of taking cognizance and issuance of notice is based on satisfaction of Magistrate and for that, it is not essential to pass a speaking order to demonstrate the basis of satisfaction.

In some of the judgments of Hon'ble the Apex Court, it has been held to the extent that even though the Magistrate was not obliged to record reasons while issuing process but he should adopt the reasonable course. The Magistrate is to examine as to whether there was sufficient material before him for proceeding against the accused persons.

Hon'ble the Apex Court in case ***M/s India Carat Pvt. Ltd. vs State of Karnataka and another 1989(2) RCR (Criminal) 132***, has held that the Magistrate can ignore the police report as he is competent to take cognizance of offence under Section 190(1)(b) Cr.P.C and direct the issue of process to accused.

In the latest judgment of Hon'ble the Apex Court in case ***Sonu Gupta vs Deepak Gupa and others 2015(2) RCR (Criminal) 32***, it has been held that at the stage of taking cognizance and summoning the accused, the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence or in other words to find out as to whether a *prima facie* case has been made out for summoning of accused persons or not. At this stage, the Magistrate is not required to consider the defence version or materials or arguments or even to evaluate the merits of the materials or evidence of the complainant.

In ***Sonu Gupta's*** case (supra), the judgment of ***M/s Pepsi Foods Limited*** (supra), which has been relied upon by learned counsel for the petitioner, has also been relied upon and discussed. In para Nos.6, 7 and 8 of said judgment, it has been observed as under :-

“6. Considering the stage at which the criminal

complaint is pending and the nature of proposed order, this Court would not like to express any definite opinion on the merits of the allegations made in the complaint petition or upon the defence taken by the accused persons before the courts below or in this Court lest it prejudices one or the other party in future.

7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the

purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.”

In determining the question as to whether any process is to be issued or not, the Magistrate has to be satisfied as to whether there is sufficient ground for proceedings or not. Whether the evidence is adequate for supporting the conviction, can be determined only at the time of trial and not at the stage of inquiry or summoning. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

Similar view was held in judgment of Hon'ble the Apex Court in case ***U.P. Pollution Control Board vs M/s Mohan Meakins Ltd. and others 2000(3) SCC 745*** and also in judgment of ***Kanti Bhandra Shah vs State of West Bengal 2000(1) SCC 722***.

In view of facts as well as law position as discussed above, it cannot be said that the entire material has not been taken into consideration by the Magistrate while issuing process. The order of taking cognizance is well reasoned. It not only refers the witnesses recorded by the Magistrate but also the satisfaction for taking cognizance and reaching on a *prima facie* view. It is also well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance, in case, the material on record makes out a case for said purpose. The investigation is the exclusive domain of the police and taking of cognizance of an offence is the area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied as to whether there is a sufficient ground for proceeding and not whether there is sufficient ground

for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the time of trial and not at the stage of inquiry or summoning and as such, at the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

Accordingly, there is no merit in the contention raised by learned counsel for the petitioners and the impugned order of summoning dated 14.12.2015 passed by the Judicial Magistrate Ist Class, Panchkula as well as order dated 27.01.2016 passed by the Revisional Court requires no interference.

Hence, all the three petitions, being devoid of any merit, are hereby dismissed.

28.03.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE