

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

**CRM-M-5114 of 2016 (O&M)
DECIDED ON: April 27, 2016**

VINOD KUMAR

....PETITIONER

VERSUS

INDU PARKASH AND ANOTHER

....RESPONDENTS

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. Naresh Kumar Bedi, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of instant petition preferred under Section 482 of the Code of Criminal Procedure, petitioner has sought quashing of order dated 24.08.2015 (Annexure P-2) passed by Id. Additional Sessions Judge, Chandigarh as well as order dated 10.07.2015 (Annexure P-1) passed by Judicial Magistrate Ist Class, Chandigarh in complaint No. 3975/2015, dated 22.04.2015 (Annexure P-1) vide which, the criminal complaint was dismissed.

2. The contention of learned counsel for the petitioner is that the impugned order(s) passed by both the court(s) below are without

application of judicial mind and mis-appreciation of evidence as well as legal proposition.

3. While assailing the impugned order(s), learned counsel for the petitioner contends that as per the allegations contained in the complaint, respondents forged and fabricated a Will. Thus, it is the duty of the Court to call the attesting witnesses along with original Will for examination, which is only possible on their summoning by the Court but no such evidence was summoned. Moreover, the evidence before the Id. Magistrate is un-rebutted and unchallenged, which has been ignored and disbelieved by the Id. lower appellate court without any rhyme and reason. Even otherwise, at the time of summoning, the Court has only to see a prima facie case and it is not required to scrutinize the evidence to see as to whether the evidence adduced by the complainant is sufficient for conviction or not. Thus, the dismissal of the complaint preferred by the petitioner is against the law and facts. As such, the impugned order(s) passed by both the courts below are not sustainable in the eyes of law and are liable to be set aside.

4. This Court has given an anxious thought to the submissions made by learned counsel for the petitioner but find the same to be without any legal substance.

5. Undoubtedly, at the time of issuance of process against a person on the basis of complaint only a prima facie case is to be seen and the Court is not required to scrutinize the evidence in order to determine as

to whether the same is sufficient for conviction or not, but at the same time, it would not be out of place to mention that issuance of process should not be an instrument in the hands of private complainant as vendetta to harass the persons needlessly. Moreover, summoning of a person as an accused is a serious matter and a person cannot be summoned simply that a person has made a statement against him/her.

6. In ***M/s Pepsi Foods Ltd. v. Special Judicial Magistrate; 1997 (4) RCR (Criminal) 761***; the Hon'ble Apex Court has observed as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused”.

7. In another case ***Pankaj Badlani and others v. M/s Nectar***

Lifesciences Ltd. And others; 213 (1) RCR (Criminal) 143; this Court has also held that accused cannot be summoned in a routine manner and the Magistrate has to apply its mind to the facts of the case as well as the law applicable thereto. He has not only to examine the nature of complaint and the evidence but also to carefully scrutinize the evidence brought on record to find out the truthfulness of the allegation. Even, he may put questions to the complainant and his witnesses in this regard.

8. Adverting to the facts of the case in hand, the order passed by the Id. Magistrate can only be set aside or quashed if it suffers from arbitrariness, illegality or perversity but in the case in hand, no such inference can be drawn at this stage. Rather, this Court is of the considered view that the impugned orders does not suffer from any illegality or perversity so as to warrant any interference by this Court. Rather, this Court is of the considered view that the orders passed by both the courts below are absolutely in consonance with the evidence available on file and settled canons of law.

9. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same is dismissed.

APRIL 27, 2016
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(JASPAL SINGH)
JUDGE