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CRR No. 1290 of 2014
DECIDED ON: FEBRUARY 04, 2016

....PETITIONER

...RESPONDENT

2.

....PETITIONER

....RESPONDENT

....PETITIONER

.....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. Ashok Tyagi, Advocate
for the petitioner.

Mr. Surinder Dagar, Advocate
for the respondent in CRR No. 1290 of 2014.

Mr. Vaibhav Narang, Advocate and
Mr. Sunil Panwar, Advocate
for the respondent in CRR No. 1385 of 2014.

Mr. Subhash Chand, Advocate
for the respondent in CRR No. 2760 of 2014.

JASPAL SINGH, J

Vide this common, I intend to dispose of three revision petitions i.e.

CRR No. 1290 of 2014, CRR No. 1385 of 2014 and CRR No. 2760 of 2014
preferred by Krishan Kumar, as all the petitions have been arisen out of the
same order.

2 Challenge in the above-referred petitions is to the order dated
January 21, 2014 passed by learned Additional Sessions Judge, Gurgaon
whereby, the order dated November 07, 2013 passed by learned Judicial
Magistrate Ist Class, Gurgaon vide which accused namely Subhash, Bijender
Hooda and Deepak Sharma have been summoned to face trial under Sections
217, 218, 323, 342 and 506 IPC in a complaint case filed by Krishan Kumar,
has been set aside.

3. While assailing the impugned order it has been argued by vehemence

by learned counsel for the petitioner that learned revisional court has misappreciated the legal proposition as well as evidence available on file which has resulted into miscarriage of justice. A well reasoned order passed by learned Magistrate has been set aside by a revisional court without assigning any cogent and convincing reason. Revisional court has ignored a well settled principle that before summoning the accused, court has to see a *prima facie* evidence regarding the commission of alleged offence and it is not required to look into the fact whether it would be sufficient to prove the offence and subsequently suffice to conviction or not.

4. A perusal of the order dated November 07, 2013 passed by learned Magistrate reveals that the same has been passed after applying the judicial mind and taking into consideration the preliminary evidence available on file. But the learned revisional court has committed an error while scrutinizing the evidence to find out whether the same would be sufficient for the conviction or not.

5. There are specific allegations against the respondent(s) which are further fortified from the evidence adduced by the petitioner before learned Magistrate. In addition to his testimony, he has also examined Dr. Amit Kumar as PW-1, who medico-legally examined the petitioner and also examined Anish Kumar one of the eye witnesses as CW-3 who has fully corroborated the version of the petitioner-complainant. The order passed by learned Magistrate is absolutely in consonance with the evidence available on file and legal proposition, which has been set aside by learned revisional court without any rhyme and reason. So the impugned order dated January 21, 2014 passed by

learned Additional Sessions Judge, Gurgaon is not sustainable in the eyes of law and is liable to be set aside.

6. On the other side learned counsel for the respondent(s) has supported the impugned order dated January 21, 2014 passed by learned Additional Sessions Judge, Gurgaon submitting that the same is absolutely in consonance with the evidence available on file and calls for no interference by this Court.

7. After hearing learned counsel for the parties and scrutinizing the impugned orders passed by both the courts below, this Court is of the considered view that the order passed by learned Additional Sessions Judge, Gurgaon is fully justified.

8. No doubt, at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint and the evidence led in support thereof. *Prima facie*, he has to satisfy himself to the question whether there are sufficient grounds for proceeding against the accused or not, on the basis of the averments made in the complaint and the preliminary evidence led in support thereof. Further at that stage, court is not obliged to sift the evidence to find out whether the evidence so produced by the complainant would be suffice to base the conviction of a person. But the learned revisional court is within its jurisdiction to consider where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority; or that the allegations made in the complaint are patently absurd and

inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against accused; or where the allegations made in the complaint or the statement of the witnesses recorded in support thereto, if taken at their face value do not disclose or make out the essential ingredients of an offence which is alleged against the accused.

9. Here it would also be appropriate to mention that 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, as it would not suffice to examine one or two witnesses as the summoning of a person as an accused in a criminal case, is a serious matter. 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”.

10. 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.

11. Adverting to the facts of the case in hand, revisional court has rightly considered all the above-said factors while passing the impugned order, which is absolutely justified and is in consonance with the evidence available on file as well as legal proposition. It cannot be said that revisional court has travelled beyond its scope. Rather, this Court is of the considered view that revisional court has rightly scrutinized the evidence to ascertain the truthfulness or falsehood of the allegations.

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

FEBRUARY 04, 2016
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(JASPAL SINGH)
JUDGE