

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

**Crl. Misc. No. M-9620 of 2016 (O&M)
Date of decision : 27.10.2016**

Suman

... Petitioner

versus

Om Parkash Gulia & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by: Mr. Sandeep Kumar Sharma, Advocate
for the petitioner.**

ANITA CHAUDHRY, J.

The instant petition has been filed under Section 482 Cr.P.C. assailing the order dated 06.07.2015 vide which order passed by the Magistrate, summoning respondent No.1 as an accused in a complaint case, has been set aside.

The petitioner filed a complaint against five persons and arraigned respondent No.1 as well. He had alleged that on 19.07.2011 accused Vijay, Ram Ratti, Naveen and Smt. Puna trespassed into her house armed with weapons. They thrashed her in presence of her daughter and also looted the jewellery worn by her, apart from cash. Her clothes were torn. According to her, the matter was reported to the police, but accused Om Parkash Gulia (respondent No.1), who was posted as ASI, a relative of accused Nos. 1 to 4 had connived with them and did not allow the police to take action against accused Nos. 1 to 4 and extended threats to her. It was claimed that the matter was reported to the higher police authorities about

the misconduct of accused No.5, but no action was taken against the accused.

A complaint was filed in the Court. Preliminary evidence was led. The complainant stepped in the witness box and also examined her daughter.

The trial Court summoned respondent No.1 and the other four accused for an offence under Sections 325, 354, 392, 452 read with Section 120-B IPC. The trial Court observed that accused No.5 had threatened the complainant.

Respondent No.1-accused No.5 filed a revision petition questioning his summoning in the complaint. The revisional Court vide order dated 06.07.2015 allowed the same and set aside the summoning order qua respondent NO.1.

Dis-satisfied with it, instant petition has been filed by the complainant.

I have heard learned counsel for the petitioner and have gone through the paper-book carefully.

Learned counsel for the petitioner had urged that the revisional Court had erred in setting aside the well reasoned order passed by the trial Court and there was no requirement of obtaining sanction as respondent No.1 had not acted in discharge of his official duties.

Before proceeding further, it is desirable to refer to the relevant observations made by the revisional Court while passing the impugned order, which read as follows:-

“10. It transpires that after the respondent/

complainant Suman had given the complaint to the police at P.S. Kalanaur, the matter was enquired into by the police in which it was found that the houses of respondent/ complainant Suman and of accused are adjacent to each other. Having separate courtyard and regarding the intervening wall, the complainant Suman has been claiming the ownership whereas accused also claimed the same to be belonging to them and civil litigation is pending in this regard in the Court. It was also found by the police that complainant Suman is quarrelsome lady and so also the wife of accused Vijay and the complainant and respondent party had been levelling baseless allegations against each other and hence, no further action was recommended by the police.

11. It may be mentioned that in the statement which has been got recorded by the complainant before the learned Magistrate in the complaint in preliminary evidence, bald allegations have been levelled that accused Om Parkash Gulia is relative of accused No.1 to 4 and hence, no action was taken by accused No.5 Om Parkash Gulia. It is evident that accused No.5 Om Parkash Gulia-applicant had acted in discharge of his public duty and could not be prosecuted for any act done in discharging of public duties without obtaining sanction from the competent authority. The complainant has not taken any sanction and hence, learned JMIC, Rohtak could not have taken cognizance in the absence of sanction. The learned trial Court had summoned the revisionist in routine manner without any legal basis. If such prosecution is allowed it will inoculate and perpetuate injustice to the revisionist. If public servants have to face such criminal prosecution for performing their official functions, it would become very difficult for

*the public servants to discharge their official duty. Reliance can be placed upon **Rajbir Dhiman and others v. State of Haryana and ors., 2011(4) RCR(Criminal) 756, Raju v. Bharat Singh and Ors., CRM No. 32524 of 2011 decided on 7.2.2013** by Hon'ble Punjab and Haryana High Court. Under these circumstances, the summoning of present revisionist amounts to misuse of process of law. Hence, the revision petition is allowed and the order dated 24.2.2014 passed by learned JMIC, Rohtak is set aside so far as the same pertains to the present revisionist....”*

A perusal of complaint (Annexure P-1) would reveal that the complainant narrated about the incident and in para No.7 thereof it was mentioned that accused No.5 was a relative of accused Nos. 1 to 4 and he did not allow the police to take action against the accused and was a party to their criminal activity. Only because the petitioner and her witness deposed on the same lines was not enough to summon respondent No.1. He was a police official and was discharging his official duties. The complainant had reported the matter to the higher police authorities, but no truth was found in the allegations. Respondent No.1 was not holding a high rank that he could influence the higher authorities or prevent them from taking any action. In the complaint, Annexure P-5 (given to the higher authorities on 22.07.2011), it was not mentioned that respondent No.1 was related to accused Nos. 1 to 4, the grievance then was that her statement was not correctly recorded. The allegation of threat was attributed to two police officials, namely, Deepak and Azad. But in the complaint filed in the Court

she came up with the stand that respondent No.1 being related to other accused had connived with them and also extended threats to her. She changed her stand so far as involvement of respondent No.1.

In **M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate, 1997(4) RCR(Crl.) 761 (SC)** their Lordships have 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."

For the reasons aforesaid, there is no illegality or perversity in the order passed by the revisional Court. The summoning order was passed by the trial Court in a routine manner, which has been rectified by the revisional Court. There is no merit in the petition and is dismissed in limine.

27.10.2016
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No