

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: - 12.9.2017

(1) CRM-M-11744-2017 (O&M)

Jagir Singh

.....Petitioner

versus

Mand Financiers and another

.....Respondents

(2) CRM-M-11727-2017 (O&M)

Jagir Singh

.....Petitioner

versus

Mand Financiers and another

.....Respondents

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Arun Abrol, Advocate for the petitioner.

Mr. Parminder Singh, Advocate for respondent No. 1.

Mr. Randeep Singh Khaira, AAG, Punjab.

ARVIND SINGH SANGWAN, J (ORAL)

This order shall dispose of above mentioned two petitions i.e.,
CRM-M-11744-2017 and **CRM-M-11727-2017** filed by the present petitioner.

For brevity, the facts are being taken from **CRM-M-11744-2017**.

Prayer in the present petition is for quashing of the order dated 4.3.2017 (Annexure P-14) passed by the learned Additional District Judge, Gurdaspur, whereby application under Section 340 Cr. P.C. filed by respondent No. 1 has been allowed.

Learned counsel for the petitioner submits that while passing the impugned order dated 4.3.2017, petitioner was never associated in the inquiry and the order has been passed without affording opportunity of hearing to the petitioner.

In support of his contentions, learned counsel for the petitioner has relied upon a judgment in 2015 (1) RCR (Criminal) 338, B.K.Uppal vs. State of Punjab, wherein it has been held that before passing an order, presiding officer should conduct an inquiry as required under Section 340 Cr. P.C. and that directing a person to face criminal trial without affording any opportunity of hearing under Section 340 Cr. P.C., is not only a principal of natural justice but also against the criminal jurisprudence. This Court in B.K.Uppal's case (supra) held as under: -

“33. Taking up the 1st question, it has come on record that no inquiry was conducted before ordering filing of the complaint against the appellants in the present case as per the mandate laid down under section 340 Cr.P.C. Only on the basis of presumption and the fact that the witnesses resiled from their statements and were declared hostile during the course of trial, it was concluded that the appellants have failed to investigate the case in a proper manner and thus have rather acted in an arbitrary and illegal manner. Without there being any evidence of perjury against the appellants, it was concluded by the trial Court that they have fabricated false evidence and record and thereafter presented the same alongwith the challan. In this backdrop, it was held by the trial Court that there is no necessity of conducting a separate inquiry under section 340 Cr.P.C. as both the appellants had been examined in this case.

34. In my considered opinion the said conclusion drawn by the trial Court under the facts and circumstances of the present case is wishful exaggeration of thought as the bare mandatory provision of Section 340 Cr.P.C. cannot be bypassed on the basis of the same. Merely by ordering institution of a complaint against the appellants without conducting a fact finding inquiry as contemplated under section 340 Cr.P.C., does not meet and satisfy the requirements of the provisions of the said section. The said complaint as per procedure has to go

through the rigors of relentless trial where the parties would lead their independent respective evidences and controverting each others' case exhaustively without any reservation. In a regular trial, there is no constraint on a person complained against to have ample opportunity to defend himself and produce all materials to show that no offence as alleged has been committed or made out against him. Asking a person to face criminal trial without affording an opportunity to him in terms of Section 340 Cr.P.C., is not only against the principles of natural justice but also against criminal jurisprudence. The Hon'ble Supreme Court of India in the case of K.Karunakaran vs. T.V. Eachara Warriar and another, AIR 1978 SC 290, it has been held thus:-

"21. At an enquiry held by the court under Section 340(1) Cr.P.C., irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

22. The party may choose to place all its materials before the court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the Court.

23. In this case the High Court came to the conclusion in the enquiry that Shri Karunakaran's first affidavit of 31st March, 1977 filed on 4th April, 1977, contained a false statement to the effect that he had no knowledge that Rajan was in police custody at any time and that "he could not have believed it to be true." It is only on that basis that the High Court held that an offence under Section 193, I.P.C. was prima facie made out. Having regard to the second affidavit of 22nd May, 1977 and for some other reasons recorded by it the aforesaid statement in that behalf was considered by the High Court as "deliberately" made.

xx xx xx xx xx

25. An enquiry when made under Section 340 (1) Cr.P.C. is really in the nature of affording a locus paenitentiae to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence."

35. In the case of Pritish versus State of Maharashtra and others [2002 (1) SCC 253] it has been held by their Lordships in paragraph No. 9 as under:-

"Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

36. In view of the facts and law noticed hereinabove, it is concluded that it was imperative for the trial Court to conduct a prima facie fact finding inquiry into the conduct and act of the appellants so as to come to a conclusion as to whether they had acted in good faith or in an arbitrary or favouritist manner under the facts and circumstances of the present case in scuttling the entire investigation so as to shield the real culprits. In the absence of any such fact finding inquiry having been conducted in the present case as contemplated under section 340 Cr.P.C., the present complaint instituted by Ahlmad of the Court on behalf of the State cannot be sustained against the appellants."

Learned State counsel as well as learned counsel for respondents have not disputed this factual position that before passing the impugned order dated 4.3.2017, neither the petitioner was associated nor was afforded any opportunity of hearing. Since, the order dated 4.3.2017 granting permission to file a complaint in the Court of Chief Judicial Magistrate, against the petitioner, will have an adverse effect on his legal rights, the impugned order dated 4.3.2017 is set aside and the matter is remitted back to the Court of Additional District Judge, Gurdaspur with a direction to conduct an inquiry after affording an opportunity of hearing to the petitioner in the light of judgment in **B.K.Uppal's case (supra)**.

Parties are directed to appear before the trial Court on 29.9.2017.

A photocopy of this order be placed on the connected file.

12.9.2017
preeti

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No