

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

Date of decision: 6.4.2017

1. **CRM-M No. 15313 of 2014(O&M)**

Prem Swarup and anotherPetitioners

VERSUS

Sudesh and anotherRespondents

2. **CRR No. 4560 of 2015(O&M)**

Sanjeev Kumar and anotherPetitioners

VERSUS

Sudesh and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate for the petitioners.

Mr. Pritam Saini, Advocate for respondent No.1.

Ms. Dimple Jain, AAG, Haryana.

REKHA MITTAL, J.

This order will dispose of CRM-M No.15313 of 2014 and CRR No.4560 of 2015 as these have emerged out of criminal complaint No.902 dated 02.12.2010 under Sections 498-A, 406, 506, 323 of the Indian Penal Code, 1860 (in short 'IPC') and proceedings emanating therefrom. For brevity, facts are taken from CRM-M No.15313 of 2014.

Counsel for the petitioners has submitted that Smt. Sudesh-respondent No.1 was married to the petitioners' son Ashwani Kumar on

21.11.2003. Ashwani Kumar is highly qualified with M.Sc., M.Tech from IIT Bombay and M.B.A. from Australian University while Smt. Sudesh is Bachelor of Dental Surgeon (BDS). Ashwani Kumar is a permanent resident of Perth, Australia and an Australian citizen since the year 2002. After marriage on 21.11.2003, Ashwani Kumar left for Australia on 25.11.2003. Later, Smt. Sudesh also joined her husband on 03.09.2004. Ashwani Kumar and Smt. Sudesh lived as husband and wife at Perth (Australia) till 27.07.2009. Dispute arose between them during their stay at Perth. Smt. Sudesh resorted to domestic violence by hitting Ashwani Kumar with a cooking tool on 12.06.2009 and also slapped and punched him which caused bleeding. Ashwani Kumar filed an application against his wife in Australia and an order dated 21.07.2009 (Annexure P-3) was passed by the Magistrate Court at Perth in favour of the husband. In pursuance of the restraint order dated 21.07.2009, both the spouses were restrained and there was no communication with each other for a period of one year. The husband filed a divorce application on 08.06.2009 (Annexure P-6) in the Family Court, Western Australia. Smt. Sudesh appeared before the Family Court, contested the application and admitted in her reply that there are no chances of reconciliation. The application was kept pending since the statutory period of one year of separation was not fulfilled but later the same was allowed vide order dated 02.12.2010 (Annexure P-8) on the ground that marriage has broken down irretrievably. It is vehemently argued that in spite of specific stand taken in her reply by Smt. Sudesh that there are no chances of reconciliation and her marriage to be over on account of differences between husband and wife, Smt. Sudesh came to India and filed criminal complaint against five members of her

husband's family including the petitioners, married brother of Ashwani Kumar namely Sanjeev Kumar and his wife, on the basis whereof FIR No.684 dated 25.12.2009 under Sections 498-A, 406, 506, 323 read with Section 34 IPC was registered at Police Station Model Town, Panipat. It is further argued that investigation in the aforesaid FIR was carried out by Randhir Singh, Deputy Superintendent of Police (in short 'DSP') City, Panipat, Kamaldeep, DSP (Headquarter), Panipat and ASI Lal Singh. On detailed investigation qua the allegations raised by the complainant, cancellation report was prepared on 12.06.2010 which was approved by the Superintendent of Police, Panipat. Smt. Sudesh, on gaining knowledge that cancellation report has been prepared by the police filed the present complaint against all the six accused who were earlier named as accused in the FIR by levelling similar allegations which were earlier inquired into by the police.

The Magistrate called for a report under Section 202 Cr.P.C. from the police of Police Station Model Town, Panipat. Inquiry report dated 21.05.2012 (Annexure P-13) was submitted in the Court wherein it was found that allegations levelled by Smt. Sudesh are baseless and false and copies of statements as well as inquiry report were attached with the report submitted under Section 202 Cr.P.C. According to counsel, the trial Court without adverting to the report submitted under Section 202 Cr.P.C. passed the summoning order (Annexure P-14) whereby Ashwani Kumar and his parents (Prem Swarup and Smt. Mitlesh Kumari) were ordered to be summoned for offence under Sections 498-A, 406, 506, 323 IPC. Complaint against Sanjiv Kumar (younger brother of Ashwani Kumar),

Smt. Mona (wife of Sanjiv Kumar) and Surbhi (married sister of Ashwani Kumar) was dismissed and they were ordered to be discharged.

The complainant preferred a revision petition against the order dated 04.04.2014 passed by the Additional Chief Judicial Magistrate, Panipat to the extent of dismissal of the complaint against Sanjiv Kumar, Smt. Mona and Surbhi. The revision petition was partly allowed by the Additional Sessions Judge, Panipat and Sanjiv Kumar and Mona were also ordered to be summoned for facing trial under Sections 498-A, 406, 506 and 323 IPC but the order in respect of accused No.6 Surbhi was affirmed.

The order passed by the Revisional Court against Sanjiv Kumar and Mona is subject matter of challenge in Criminal Revision No.4560 of 2015. It has been strenuously argued that whatever happened between Smt. Sudesh and her husband Ashwani Kumar during their five years' stay in Australia, the same cannot be allowed to become subject matter of adjudication before the Courts in India. It is further argued that criminal proceedings initiated by the respondent/complainant are nothing but abuse and misuse of process of law, thus liable to be quashed. Further argued that the trial Court despite having called for a report under Section 202 Cr.P.C. and report dated 21.05.2012 having been submitted by the police with the findings that the allegations are baseless and false, the trial Court did not consider the report while passing summoning order dated 04.04.2014. The Revisional Court in place of setting aside the summoning order against Ashwani Kumar and his parents by examining the report dated 21.05.2012 committed another illegality by summoning Sanjiv Kumar and Smt. Mona as well. The last submission made by counsel is that the Court at Panipat lacks jurisdiction as the alleged occurrence dated

13.12.2009 pleaded by the complainant to confer jurisdiction on the Court at Panipat actually never happened as reported by the police in the cancellation report. In addition, it is argued that Prem Swarup is a practicing Advocate, more than 80 years of age, thus, continuation of the proceedings would result in untold misery to the old couple in the evening of their life.

Counsel for the respondent, while refuting contentions of the petitioners has submitted that the disputed questions of fact are not amenable to adjudication in exercise of jurisdiction under Section 482 Cr.P.C, therefore, no intervention is warranted. At the stage of finding a prima facie case, the trial Court cannot delve deep into the averments raised by the complainant and preliminary evidence adduced in support of the allegations because at this stage, the Court simply has to find out if there is a prima facie case to summon the accused to face trial.

I have heard counsel for the parties, perused the paper-book particularly the various annexures appended with the petition.

Before advertng to the submissions made by counsel for the parties, it is appropriate to recapitulate the legal position with regard to scope of inquiry under Section 202 Cr.P.C. Hon'ble the Supreme Court of India in **Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others, AIR 1976 SC 1947** after referring to the earlier decisions of the Court **Chandra Deo Singh Vs. Prokash Chandra Bose, (1964) 1 SCR 639** and **Vadilal Panchel Vs. Dattatraya Dulaji, (1961) 1 SCR 1** has laid down that the criminal complaint or the summoning order can be set aside in the following cases:-

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where 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 the accused;

(3) 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 .

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”

Though the petitioners have prayed for quashing of the criminal complaint as well as summoning order dated 04.04.2014 but the main grievance of the petitioner is against the summoning order. As per the settled position in law, a person arrayed as an accused in a criminal complaint pending in the Court cannot file a petition for quashing of the proceedings until an order is passed by the Court issuing process calling upon the accused to appear and face proceedings.

In the instant case, vide summoning order dated 04.04.2014, Prem Swarup and Smt. Mitlesh Kumari - petitioners along with their son Ashwani Kumar were summoned for facing trial under Sections 498-A, 406, 506, 323 IPC. Later, in the revision filed by the complainant two more persons namely Sanjiv Kumar and Smt. Mona were also summoned for the aforesaid offences by modification of order dated 04.04.2014 passed by the trial Court.

A plain and casual reading of the order dated 04.04.2014 (Annexure P-14) and order passed by the Revisional Court, subject matter of challenge in CRR No.4560 of 2015 would evident that both the Courts have taken note of the fact that complaint was sent for investigation under Section 202 Cr.P.C. and report in this regard was received from the police. Perusal of report dated 21.05.2012 (Annexure P-13) would reveal that in the report there is reference to registration of FIR No.684 dated 25.12.2009 under Sections 498-A, 406, 323, 506 IPC and the same being inquired by Smt. Kamaldeep, DSP (Headquarters) Panipat. In the inquiry, allegations levelled by the complainant Sudesh Kumari were found to be baseless and false and cancellation report, statements of the complainant, respondents and the documents were annexed with the report submitted under Section 202 Cr.P.C.

The trial Court has not adverted to the report submitted under Section 202 Cr.P.C. much less assigned any reason for its refusal to agree with the cancellation report or the report under Section 202 Cr.P.C. Similarly, the Revisional Court while setting aside the order passed by the trial Court qua non-summoning of Sanjiv Kumar and Mona did not look into the reports. If the Courts can discard the report submitted under Section 202 Cr.P.C. without a whisper in this regard, the very purpose of calling for a report under Section 202 Cr.P.C. would be frustrated and rendered nugatory. The legislative intent behind calling for a report from the police is not an empty formality but to save the accused from unnecessary harassment as summoning a person as an accused is of serious consequence. The very fact that the Courts did not consider the report received under Section 202 Cr.P.C., the summoning order passed by the

trial Court against Ashwani Kumar and others and the revisional order summoning Sanjiv Kumar and Mona to face trial cannot stand the test of judicial scrutiny.

Keeping in view what has been discussed hereinabove, the petitions are partly allowed; impugned orders dated 04.04.2014 passed by the trial Court and dated 29.10.2015 passed by the revisional Court summoning the petitioners to face trial are set aside with a direction to the Judicial Magistrate, Panipat to pass a fresh order after taking into consideration the report under Section 202 Cr.P.C. submitted by the police. The petitioners shall not be entitled to an opportunity of hearing at the time of reconsideration of the matter by the Magistrate, being a pre-process stage in a private complaint. For this purpose, reference is made to judgment of Hon'ble the Supreme Court of India **Manharibhai Muljibha Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others, 2012(4) RCR (Criminal) 689.**

As a result, the petitions are disposed of in the aforesaid terms.

APRIL 6, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no