

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

**CRM No.27878 of 2017 in/and
CRM-M-30080 of 2017
Date of Decision: 25 October, 2017**

Ashish Khetan

...Petitioner

Versus

Bikram Singh Majithia

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.S. Cheema, Senior Advocate
with Mr. Sandeep K. Sharma, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

CRM No.27878 of 2017
Heard.

The application stands allowed. Annexures are ordered
to be taken on record subject to just exceptions.

CRM stands disposed off.

CRM-M-30080 of 2017

The brief facts that are much essential for better
appreciation and decision in the present matter are that the present
respondent, who claims to be an elected member of the Punjab Legislative
Assembly besides holding other posts in the political set up of the State
filed against the present Chief Minister of Delhi, Convener Punjab Affairs
of Aam Aadmi Party and one Member-cum-Spokes Person of this political
outfit a complaint for their allegations of levelling alleged to be

unsubstantiated, highly maligning and defamatory statements degenerating the complainant and his character in the eyes of the public and, thus, causing criminal defamation and levelling all sorts of insinuation of living a life with criminal background terming such utterance made in the media as well as otherwise to be mere rhetoric and false allegations which have totally demeaned and lowered the dignity of the complainant not only in the eyes of public at large but in the eyes of his family as well which is claimed to be one of the reputed family. It was on the basis of the statement of the complainant as CW1 his witnesses CW2 to CW5 in the process proved the documents Ex.C1 to Ex.C14 and upon closer of the preliminary evidence, learned Additional Chief Judicial Magistrate, Amritsar through orders dated 18.7.2016 summoned all the three accused prima facie for commission of offences under Sections 499,500,501,502,120-B and 34 IPC but discharged them qua offences under Sections 501,502 and 120-B IPC. It is consequent upon appearance of the accused, the trial Magistrate through orders dated 18.11.2016 served notice of accusation to all the three accused for commission of offences under Sections 499, 500, and 34 IPC.

The petitioner who happens to be accused No.3 has invoked the jurisdiction of this Court under Section 482 IPC seeking quashment of the complaint (Annexure P/1), summoning orders dated 18.07.2016 (Annexure P/2) and notice of accusation dated 1811.2016 (Annexure P/3) and other proceedings as a consequence arising therefrom.

Learned Senior counsel for the petitioner has led multipronged attack on the complainant's case on the grounds that prima facie allegations bear out three incidents and how a single complaint has

been filed and different co-accused have been jointly put to trial and, thus, claimed it to be a mis-joinder of charges as well as accused and secondly on the ground of non-compliance and violation of provisions of Section 202 Cr.P.C for which reliance has sought to be placed on **National Bank of Oman vs. Barakara Abdul Aziz and another (2013) 2 SCC 488; S.K. Bhowmik vs. S.K. Arora and another 2007(4) RCR (Cri) 650; M/s Bharat Trading Co. etc. vs. State of Haryana and another CRM-M-32045 of 2010; Smt Neeta Sinha vs. P.S. Raj Steel Pvt. 2010(3) RCR (Cri) 509; 4 Prem Kumar @ Premo vs. Balwinder Kaur 2009(2) RCR (Cri) 4 and Savera Sidhu vs. Harleen Sidhu and another 2011(2) RCR (Cri) 442.**

Section 202(1) Cr.P.C has been amended by insertion w.e.f 23.06.2006 which is as under:-

“Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

- (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions:
- or
- (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.”

There is no provision in the Code of Criminal Procedure, 1973 (in short 'the Code') for the return of the complaint and it is only in the eventuality where the Court comes to the conclusion that offence

is such of which the Magistrate is not competent to take cognizance and therefore, if the Magistrate has jurisdiction it needs to proceed ahead and pass an appropriate order as it may deem fit in the circumstances of the case. The ambit of Section 202 casts a duty upon a Magistrate, receiving a complaint and, thereby, finding out whether there is any matter which calls for investigation by a Criminal Court and it empowers the Magistrate if he sees reason to distrust the truth of a complaint of an offence, to postpone the issue of process for compelling the attendance of a person complained against and to direct a local investigation either to be made by Police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceedings and instead directing the investigations by a Police Officer, the Magistrate may inquire into the case himself or direct investigations by such other person as it deems fit.

To the mind of this Court there is no bar of taking cognizance after examining all the witnesses. As is reflected and is admitted stand of the learned Senior counsel for the petitioner, the Court below has recorded the preliminary evidence of the witnesses and by virtue of detailed order dated 18.07.2016 Annexure P/2 has summoned the three accused and consequent upon their appearance have served upon them notice of accusation (Annexure P/3). In this case, as is there, the learned Magistrate below has recorded the statement of the complainant and his witnesses on oath under the provisions of Section 200 of the Code and which is primarily with a purpose to find out whether or not prima facie case has been made against the accused. In the impugned order of summoning, the Magistrate has clearly enlisted his opinion that it finds prima facie case for commission

of offences under Sections 499,500 and 34 IPC and no case under Sections 501,502 read with Section 120-B was made out. Had no case been made out he could have easily dismissed the complaint under Section 203 of the Code. These proceedings under Section 202 Cr.P.C which stand accomplished tantamounts to an inquiry. The term inquiry as defined in Section 2(g) of the Code is as follows:-

“inquiry means every inquiry, other than a trial,
conducted under this Code by a Magistrate or Court.”

which clearly envisages inquiry before actual commencement of the trial and is an act, conduct by virtue of the Code by the Magistrate and cannot be construed in any manner as has sought to be assailed before this Court by the learned counsel for the petitioner. To the mind of this Court, there is no legal obligation on the part of the Magistrate taking cognizance of the offence to having recourse what has sought to be brought forward by the learned counsel for the petitioner on the basis of the cited ratios which do not come to the aid of the petitioner. The learned Court below has clearly held an inquiry before summoning the accused and consequent upon their appearance served them notice of accusation, therefore, at a pre-cognizance stage, and thus, this argument is untenable.

The second leg of submission as to three incidents having been clubbed along with three different accused by claiming it to be a mis-joinder are matters of evidence which can be gone into by the Magistrate at the time of trial and in view of this well enshrined principle of law as has been laid down in *State of Madhya Pradesh vs. Awadh Kishore Gupta and others 2004(1) RCR (Criminal) 233* that in exercise of inherent powers under Section 482 Cr.P.C this Court is not supposed to evaluate the

evidence on the touch stone of detailed inquiry and is the job the trial Court.

Thus, in the light of what has been detailed and discussed above the present petition being hopelessly without any merits stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

25th October, 2017

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No