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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3115-2015

Date of Decision:- August 30, 2017

Santosh Kaur alias Toshi

....Petitioner

Versus

Major Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Naveen Sharma (Moudgil), Advocate, ,
for the petitioner.

Mr. S.P.Soi, Advocate, and
Mr. Mohan Singla, Advocate [Legal aid counsel]
for respondent No.1.

Mr. Rahul Rathore, DAG, Punjab

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [Cr.P.C.] is for quashing of Complaint No. 180/1/2013 dated 01.06.2009 (Annexure P/1) titled **Major Singh Vs. Balkar Singh and others**, and the summoning order, dated 03.10.2013,[Annexure P/2] passed by learned Judicial Magistrate Ist Class, Phillaur, District Jalandhar, qua the petitioner.

2. Facts relevant for the purpose of decision of this case, as detailed in the petition; that Major Singh, respondent No.1 herein, filed a complaint (Annexure P/1) against the present petitioner and Balkar Singh,

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Simarjeet Kaur, Rashpal Singh, Maliat Singh, Baja alias Balraj Singh for the offence punishable under Sections 323, 341, 307, 382, 506, 148 read with Section 149 IPC as well as Section 25 of the Arms Act (for short, “the Act”) before learned Judicial Magistrate Ist Class, Phillaur. On the basis of said complaint, summoning order dated 3.10.2013 (Annexure P/2) was passed by the trial Court. Respondent No.1 committed offences punishable under Sections 323, 506 IPC and Sections 25 and 27 of the Act against Balkar Singh and FIR No. 55 dated 31.3.2009 (Annexure P/3) was registered at Police Station – Nurmehal, District Jalandhar against Major Singh, complainant of this case. Learned Judicial Magistrate Ist Class, Phillaur held Major Singh guilty for offence punishable under Section 323 IPC and convicted him thereunder and respondent no.1 was ordered to be released on probation.

3. In the reply filed by respondent No.1, Major Singh, preliminary objection was taken that the present petition is not maintainable as the petitioner has not availed the alternative remedy of filing revision petition before the Sessions Court. In fact, filing of present petition is misuse of process of the Court. While replying on merits, respondent no.1 took the plea that by no stretch of imagination, it can be said to be a false complaint as the findings are yet to be returned regarding conviction or acquittal of the accused person in the complaint (Annexure P/1).

4. Learned counsel for the petitioner submitted that the petitioner is a Non-Resident Indian (NRI) as she is resident of England. In fact, as the aforesaid FIR No. 55 (Annexure P/3) was registered against respondent No.1, initially Major Singh lodged a DDR with the Police and

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thereafter filed the present complaint, which is counter-blast to the FIR No. 55. So, the present complaint as well as summoning order are mis-use of the process of the Court. Otherwise, the offences were committed by Major Singh, complainant of the present case, for which FIR was lodged and after investigation, learned trial Court found Major Singh to be guilty and convicted him under Section 323 IPC on 21.12.2013 (Annexure P/4). More so, the FIR as well as complaint are relating to the same facts and process of law set on motion on the basis of such a complaint is abuse of process of law and the same be quashed.

5. Learned counsel for respondent No. 1 submitted that the petitioner being NRI is no ground to quash the present complaint. In fact, the complaint and FIR are version and cross-version of each other and both the cases should have been decided together, but there is no ground for quashing of present complaint and the summoning order in exercise of powers under Section 482 Cr.P.C., especially when there is a specific provision in the Code of Criminal Procedure for the redressal of the grievance of the aggrieved party by filing a revision petition under Section 397 Cr.P.C.

6. Having considered the submissions made by learned senior counsel for the petitioner, this Court is of the considered view that the summoning order under challenge was passed by learned Judicial Magistrate. The said order can be challenged before the Court of Sessions as per provisions of Section 397 Cr.P.C. For facility of reference, Section 397 Cr.P.C., is extracted below:-

“397. Calling for records to exercise powers of revision. (1)
The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate

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within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

[\(2\)](#) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

[\(3\)](#) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

7. The above quoted provisions give power to move before the Court of Sessions as well for challenging the orders by way of revision.

8. Section 482 Cr.P.C. deals with inherent powers of this Court. It is well-established principle of law that inherent powers conferred on this Court under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too, to correct patent illegalities of when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed, because they are initiated illegally, vexatiously or without jurisdiction and where the allegations, even if they they are taken at their face value and accepted in their entirety, do

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not *prima facie* constitute any offence or make out a case against the accused. The content and scope of power under Section 482 Cr. P.C. were examined in considerable details by Hon`ble Apex Court in **Madhu Limaye v. State of Maharashtra, 1978 AIR (SC) 47**, and it was held as under:

“The following principles may be stated in relation to the exercise of the inherent power of the High Court:-

(1) **that the power is not to be restored if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;**

(2) that it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;

(3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

9. Apparently, the appropriate remedy available to the petitioner is of a revision petition questioning the legality and propriety of the impugned order.

10. In view the above, the present petition under Section 482 Cr.P.C. is not maintainable and is dismissed as such. However, the petitioner shall be at liberty to avail alternative remedy as available under the law.

August 30, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned	Yes
Reportable	Yes