

119.

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

CRM-M-32346-2017

Date of decision:01.09.2017.

GULZAR SINGH AND OTHERS

... Petitioners

versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. D.S. Pheruman, Advocate,
for the petitioners.

HARI PAL VERMA, J.

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing the Criminal Complaint No.17 dated 14.07.2015 pending in the Court of learned Judicial Magistrate Ist Class, Batala, District Gurdaspur (Annexure P/9), filed by Tarsem Singh-complainant (respondent No.2 herein), under Sections 326, 325, 324, 323, 342, 382, 365, 427, 201, 148, 149, 120-B IPC. Challenge has also been laid to the summoning order dated 06.07.2017 passed by learned Judicial Magistrate Ist Class, Batala (Annexure P/15), whereby the petitioners have been summoned to face trial in the complaint.

Briefly stated, respondent No.2 had filed a complaint that on 08.05.2015 at about 6-7 AM when the complainant was coming back to his village after taking a round of his tubewell on his motorcycle bearing No.PB-18-N-5040 and had reached near the house

of Gulzar Singh son of Kashmir Singh, he noticed that some ladies (Kulwant Kaur, Jyoti, Manjit Kaur, Gurpreet Kaur and Manpreet Kaur) were standing on the way in front of the house of Gulzar Singh, who were carrying buckets and sticks. On seeing the complainant, they tried to block his way, but somehow, he (complainant) fled away. However, when the complainant took a turn, the accused-Kashmir Singh, Gulzar Singh, Sukh Ram, Satnam Singh, Balkar Singh, Jagroop Singh and Gurdial Singh etc. were standing there and they stopped his way and stood in front of his motorcycle. When the complainant asked them why they are blocking his passage, the accused persons asked him to get down from his motorcycle. But when the complainant did not come down, Kashmir Singh broke the headlight of motorcycle of the complainant with a dang blow. Jagroop Singh broke the rear light of the motorcycle and Gulzar Singh pushed the complainant as a result of which, he fell in front of Harbhajan Singh's flour mill. Then Satnam Singh removed the complainant's turban with his elbow and started hitting him. Gulzar Singh had pulled his beard due to which, his hair came out. All the above named ladies came there and held the complainant from his legs and arms and hit him with their chappals. Then Kashmir Singh hit the complainant with dang, from right ankle till thumb. Gulzar Singh hit the complainant with hockey on right ribs and right waist. Sukh Ram Singh hit the complainant with dang on his left elbow and Satwant Singh hit him with the dang on the left side of right ankle. Balkar Singh hit him with the kirpan on the front portion of

left leg and on the area below the right knee, from which blood started oozing out. Jagroop Singh lifted his dang towards the face of the complainant and when he lifted his right hand to save himself, it hit him on the index finger of the complainant. Then Rupan Singh was about to attack the complainant with his dang, he placed his right hand and it eventually hit near the right wrist and middle finger. Gurdial Singh hit the complainant on his right shoulder and left foot with a dang. On raising hue and cry by the complainant, his son, who was then in flour mill, came there to save the complainant. Charan Kaur and Kulwant Kaur punched him and hit him with a dang on his right shoulder and stomach. A few villagers came on the spot. Balkar Singh forcibly took ₹750/- and keys of tubewell from the pocket of the complainant and abducted him in a white Sumo No.DL-4CF-4299 with an intention to kill him, towards Dera Baba Nanak. But when the accused persons did not reach on any consensus, they took him to Civil Hospital, Dera Baba Nanak and told the nurse to bandage him as it is an accident case. The complainant narrated the entire incident to the nurse and laid there for 1-1½ hour. When the complainant's relatives came there, they took him to the Civil Hospital Batala where the doctor refused to conduct his medical examination and asked them to take him to civil hospital Dera Baba Nanak.

It has been alleged by the complainant that the motive behind the said occurrence is that there is a case pending between the petitioner No.1-Gulzar Singh and the complainant under Sections 419,

420, 467, 471 IPC. It is on 27.05.2015, when a witness was to be examined regarding forged certificates prepared by Gulzar Singh, he conspired with other accused to inflict injuries on the person of complainant. The complainant reported the matter to the police, but no action was taken against the accused. Hence, the complainant-respondent No.2 filed a complaint and vide order dated 06.07.2017 passed by the Magistrate, the petitioners-accused were summoned to face trial.

Learned counsel for the petitioners has argued that the complainant is in the habit of making false complaints and used to harass the petitioners. He filed various complaints against the petitioners which were found false after inquiry. The father of petitioner No.3-Satnam Singh, namely, Jagir Singh, who retired from Army in the rank of Naib Risaldar, was quite upset because of the act and conduct of complainant. Jagir Singh was a patient of high blood pressure and died on 07.05.2015. On the following day i.e. 08.05.2015, people were coming to the house of petitioner No.3 for condolence. When Gulzar Singh and Jaswant Singh were also coming to the house of petitioner No.3, in the meantime, Tarsem Singh-complainant came on his motorcycle, which was being driven at high speed, struck against Jaswant Singh and Gulzar Singh and they fell down. Tarsem Singh could not control his motorcycle and he also fell down along with his motorcycle. Minor injuries were received by both the parties and the complainant was removed to the hospital at Dera Baba Nanak along

with Gulzar Singh and Jaswant Singh because it was only an accidental case. Both Gulzar Singh and Jaswant Singh were medically examined at the said hospital whereas Tarsem Singh left the hospital without the consent of the doctor with an intention to fabricate the injuries on his person. On 17.06.2015, the complainant gave an application to the police against the petitioners and the police conducted enquiry wherein it was observed that it was only a case of accident and because of party faction of the village, both the parties had made an attempt by fabricating injuries on their persons. In the enquiry report dated 27.08.2015 (Annexure P-8), it was reported that the injuries received by Tarsem Singh on his right ankle and fracture on foot was due to the accident, when he fell down on the road from his motorcycle which he was driving with high speed. Only simple injuries were suffered by both the parties. The complaint is based on parties faction.

Learned counsel for the petitioners has relied upon a judgment of this Court rendered in **Madhu Rani Versus Prem Kumar and others-2015(3) R.C.R. (Criminal) 889** to contend that in a private complaint, Magistrate is not bound to set the criminal law in motion simply because the petitioner has made statement and has produced the evidence. Still the Magistrate is required to apply his judicial mind to the facts of the case and the material available on record. Summoning of an accused in a criminal case is a serious matter. Magistrate has to carefully scrutinize the evidence brought on record at the time of summoning the accused. Reliance has also been placed on the

judgment rendered in **Arun Jha and another Versus State of Haryana and another-2006(1) R.C.R. (Criminal) 300** to contend that Magistrate should not issue the process of summoning in a mechanical manner merely on the basis some statements of alleged witnesses. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint, but at the same time, the Magistrate has to look into such allegations deeply and it must reflect that he has applied his judicial mind on the facts of the case and the law applicable thereto at the time of summoning of the accused.

I have heard learned counsel for the petitioners and perused the record.

The cases i.e. **Madhu Rani & Arun Jha** (supra) cited by learned counsel for the petitioners are not applicable to the facts and circumstances of present case, because in the present case complainant has adduced material before the Magistrate to summon the petitioners. Relevant extract of findings recorded by the Magistrate while summoning the petitioners reads as under:-

“The complainant has placed on record admission record Ex. CW3/B, copy of MLR Ex.CW3/A, copy of supplementary report of SHO Ex.CW3/E, copy of X-ray report Ex.CW5/B. From the evidence of the complainant, his son injured eye witness, testimony of doctor and medical and documentary evidence appended with, it is established that on the alleged date of occurrence injuries were inflicted on the complainant and his son Gurvinder Singh. Further the medical evidence prove the severity of injuries

inflicted on the complainant and testimony of CW1 proves that the application was moved by the complainant before SSP Batala, which was registered with a peshi no, but no further action was taken on it. So far as summoning the accused under Section 382 and 201 IPC is concerned there is no evidence on record as would warrant summoning under these provisions. Therefore, from the evidence led by the complainant as well as documents on record, it is proved that there is sufficient material to summon the accused under Section 326/ 325/ 324/ 323 /342/ 365/ 427/120-B/148/149 IPC. Accordingly, all the accused are summoned to face trial under the above said sections. Let, summons to all the accused be issued for 07.08.2017.”

The petitioners have approached this Court seeking quashing of a complaint as well as summoning order in exercise of powers under Section 482 Cr.P.C. despite there being 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.

Having considered the submissions made by learned counsel for the petitioners, 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.

Section 482 Cr.P.C. provides inherent powers to the High

Court to interfere in such like cases, but at the same time, 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 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 Versus 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.”

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

In view of Section 397 Cr.P.C. against the order passed by the Magistrate wherein the accused has been summoned, the petitioners have a remedy to file revision petition. But in the present case, the petitioners, instead of resorting to said remedy, have filed the present petition seeking quashing of complaint as well as summoning order.

Since the petitioners were required to avail the remedy of revision before the Sessions Court, but they straightway approached this Court, therefore, without making any observation as to the merits of the case, present petition is dismissed. If petitioners file a revision petition within one month from the date of receipt of certified copy of this order, the revision petition shall not be dismissed on the ground of limitation alone.

(HARI PAL VERMA)
JUDGE

01.09.2017

sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.