

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-33421 of 2017

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Date of decision:12.10.2017

Vivek Sawal

...Petitioner

v.

Vaibhav Batra and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vivek Sheoran, Advocate for Mr. Hemant Bassi, Advocate for the petitioner.

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Inderjit Singh, J.

This criminal miscellaneous petition has been filed under Section 482 Cr.P.C. for quashing of complaint No.02 dated 22.1.2013 (Annexure-P.4) filed under Sections 420 and 120-B IPC and summoning order dated 15.10.2014 (Annexure-P.5) passed by learned Chief Judicial Magistrate, S.A.S. Nagar, Mohali as well as all the consequential proceeding emanating therefrom qua the petitioner.

I have heard learned counsel for the petitioner and have gone through the record.

A perusal of the record shows that earlier Vivek Sawal-petitioner filed the petition against Vaibhav Batra bearing Criminal Misc. No.M-44040 of 2014, which was decided by this Court on 8.9.2016. The

said petition was filed for quashing of the complaint and the summoning order. This Court decided the quashing petition on merit and held that it cannot be held that filing of complaint is abuse of process of law or amounting to miscarriage of justice. It was also held in that petition that at this stage, there is nothing to show that the present petitioner/accused has been falsely implicated in the complaint case. Further, at this stage, it cannot be held that no offence is made out against the present petitioner or it is a civil dispute. It was also held that the impugned order dated 15.10.2014 passed by the learned Chief Judicial Magistrate is correct as per evidence and law and no ground was made out for quashing the impugned complaint and the summoning order dated 15.10.2014 and that quashing petition filed by the present petitioner was dismissed.

Now the same petitioner has again filed the petition for quashing the same complaint and the same summoning order. The counsel for the petitioner has not shown any changed circumstances after the passing of the order. The counsel for the petitioner argued that during the pendency of the earlier proceedings the complainant had withdrawn the complaint against the main accused. He argued that he was not knowing that fact at that time and it has come to the knowledge of the petitioner afterwards. He argued that as the complaint has already been got withdrawn against the co-accused, who was the main accused, the further proceedings in the complaint against the petitioner cannot continue and asked for quashing the complaint as well as the summoning order.

From the arguments of the counsel for the petitioner, it is clear

that the complaint has been withdrawn earlier to the dismissal of the quashing petition and no such facts had been argued at that time. After the passing of order, there were no changed circumstances. Otherwise also, if the complaint has been withdrawn by the complainant against the other accused, the present petitioner can file the application before the Magistrate which will be decided as per law. He cannot come again asking for the same relief for quashing the complaint and summoning order before this Court specially, when the first petition has been decided on merit.

Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee and another, (1990) 2 SCC 437. I have gone through the law laid down in this judgment. This judgment having distinguished facts will not apply in the present case as in that case there was change of circumstances which is not there in the passing of the order on merit by this Court in the earlier quashing petition. Therefore, counsel for the petitioner placed reliance on the judgments of Hon'ble Supreme Court in Tara Devi v. State of U.P., (1990) 4 SCC 144; of High Court of Madras in D. Simpson v. S.T. Perumal (Crl.O.P. Nos.8352 & 6556 of 2014, decided on 2.4.2014); P. Thomas v. P. Magudapath and another (Crl.O.P. No.17518 of 2014, decided on 25.7.2014); of this Court in Gurpreet Singh alias Khinder v. State of Punjab, 1995 (2) R.C.R. (Criminal) 127 and of Orissa High Court in Surendra Kumar alias Surendra Routray and another v. State of Orissa, 2011 SCC OnLine Ori.280. I have gone through the law laid down in these judgments. These judgments having distinguished facts

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will not apply in the present case. The other co-accused has not been acquitted on merit, rather, the complaint has been withdrawn.

Theefore, finding no merit in this petition, the same is dismissed.

October 12, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No