

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

**CRM No.M-38316 of 2011 (O&M)
Date of Decision: November 30, 2017**

M/s R.K.Thareja Auto Parts and another

...Petitioners

VERSUS

Shiv Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashok Gupta, Advocate
for the petitioners.

Mr.Vishwajit Bali, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondent Shiv Kumar for quashing complaint No.202/02 dated 30.10.2001, summoning order dated 18.04.2002, orders dated 20.01.2005, 10.08.2009, 25.10.2011 along with all subsequent proceedings after passing of summoning order dated 20.01.2005.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

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

From the record, I find that earlier a complaint was filed by

Shiv Kumar, Proprietor of M/s Nishant Steel Industries against

Sh.R.K.Thareja, Proprietor and R.K.Thareja Auto Parts, through its proprietor Sh.R.K.Thareja. After the preliminary evidence, the Court passed the summoning order dated 18.04.2002. An application was filed by the complainant for correction in the name of accused No.1 and 2 in the complaint and stated that he came to know that cheque in question was issued by Subhash Thareja and not by R.K.Thareja, as such the name of accused is required to be corrected from R.K.Thareja to Subhash Thareja. Vide order dated 20.01.2005, this application was allowed and accused was summoned. Then an application was filed by the accused for recalling of summoning order and discharge of the applicant-accused Subhash Thareja, upon which, the order dated 10.08.2009 was passed by the Court and the application was dismissed. Against all the above-stated orders, no revision etc. has been filed by the present petitioner by challenging the summoning order, or the order correcting the name of accused. The trial proceeded accordingly. The evidence of the complainant was complete. The statements of the accused was recorded under Section 313 Cr.P.C. Even some defence witnesses were examined and as per order dated 25.10.2011, passed on the application under Section 311 Cr.P.C., about 36 opportunities have been availed by the present petitioner for leading defence and then application under Section 311 Cr.P.C. was filed for recalling the complainant and asking him to tell about the documents etc. and it is stated that these documents seems to be tampered with. This application under Section 311 Cr.P.C. was dismissed by learned JMIC, Ludhiana, vide order dated 25.10.2011.

The perusal of the record shows that the complaint was filed in

the year 2001 and the summoning order was passed in the year 2002, against

which no revision was filed. Then order of correction of name of accused was passed on 20.01.2005 and this order was also not challenged by the petitioner. Then, again an application was filed for recalling the order dated 20.01.2005, which was also dismissed. No revision against these orders was filed, which means that all these orders have become final. Learned trial Court has already taken the cognizance and the trial is almost complete. When the case was fixed for defence and arguments, then this petition for quashing the complaint has been filed.

In the facts and circumstances of this case, this complaint cannot be quashed nor the summoning order passed much earlier before filing of this petition, can be quashed. There is delay and latches on the part of the petitioners and these orders have never been challenged within statutory period and challenging these orders and praying for quashing the complaint, at this stage, is nothing but to delay the proceedings of the complaint.

As regarding the order whether statutory legal notice to Subhash Thareja has been given or not, it is finding of fact, which is to be given by the trial Court on the basis of the evidence, which the parties have to produce before it.

As regarding order dated 25.10.2011, I find that the order passed by learned JMIC, Ludhiana, is correct, as per evidence and law. The purpose of filing of this application under Section 311 Cr.P.C. is nothing but to delay the proceedings and the petitioners have succeeded to some extent in delaying the proceedings. When the complainant was examined and he was duly cross-examined, all these facts were in the notice of the present petitioners. Then why these documents were not put to the complainant and

why he was not cross-examined qua the documents. It is not the case of the petitioners that they came to know regarding these facts later on.

Keeping in view the above discussion, I find that the impugned orders are correct, as per evidence and law. No illegality has been committed by learned Court below.

Therefore, finding no merit in the present petition, the same is dismissed. Learned trial Court is directed to decide the case expeditiously preferably within five months from the date of receiving of copy of this order.

November 30, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No