

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

Crl. Misc. M-10395 of 2018 (O&M)
Date of Decision: July 12, 2018

Lekh Ram and others

...Petitioners

Versus

Prem Chand

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Parveen K. Gaur, Advocate
for the petitioners.

JAISHREE THAKUR, J. (Oral)

1. This is a petition that has been filed under Section 482 Cr.P.C. seeking to challenge and set aside the Criminal Complaint No.29 dated 21.04.2017(COM1/2018/2017), filed under Sections 148, 149, 323, 452, 313, 120-B, 506 r/w 34 of Indian Penal Code (in short 'the IPC'), titled as "Prem Chand vs. Lekh Ram" pending in the court of Additional Sessions Judge, Faridabad as well as the summoning order dated 01.06.2017 passed by the Judicial Magistrate Ist Class, Faridabad, vide which the petitioners have been summoned under Sections 313, 323, 452, 506 r/w 34 of IPC.

2. The petitioners herein contends that a false and frivolous complaint has been filed, which primarily arises out of a civil suit over a land. In fact, petitioner No.1 and the complainant are closely related being brothers. A partition took place of the land and each family member was

put in their own respective portion. In the complaint, it is a case of the complainant that on 04.12.2016, the complainant was demolishing his own construction over his portion of the land, while the accused in collusion with each other forcibly entered the house of the complainant and assaulted him and his wife, as well as his sister-in-law Smt. Kavita w/o Dharambir. The new construction on the plot was also demolished. The wife of the complainant Smt. Veena and sister-in-law Smt. Kavita also received multiple injuries. The complainant went to have the FIR registered, however, the police did not do so. On coming to know that the complainant had gone to register an FIR, the accused persons in collusion with each other, entered the house of the complainant in his absence and attacked his wife Smt. Veena, who suffered a miscarriage, as she was pregnant at that time. The complainant was admitted into hospital as indoor patient from 04.12.2016 to 14.12.2016 whereas, Kavita was discharged on the same day. The pregnancy of Smt. Veena could not be saved. On the basis of the injury, a ruqa was sent to the police and the statement of Smt. Veena, wife of the complainant was recorded, but no FIR was registered by the police station. The complainant then approached the higher authorities through DCP Ballabgarh and thereafter, a complaint case was initiated.

3. The complainant got three witnesses examined in preliminary evidence and tendered the documents, which were marked as C1 Application to SHO, Chhainsa, Ex.C2 MLR of Smt. Veena, Ex.C3 MLR of Mrs. Kavita, Ex.C4 Application to DCP, Faridabad and Ex.C5 Discharge card of Smt. Veena. The Judicial Magistrate Ist Class, Faridabad, thereafter perused the case file and came to the conclusion that a prima facie case is

made out, which was supported by the medical evidence. By an order dated 01.06.2017, the Judicial Magistrate Ist Class Faridabad, summoned the petitioners herein under Section 313, 323, 452, 506 read with Section 34 of IPC to face trial. Thereafter, the matter was argued afresh and taking note of the evidence available on the record, the Judicial Magistrate Ist Class, Faridabad, directed the matter to be committed to the Court of Session, Faridabad for trial since, the offence punishable under Section 313 IPC was exclusively triable by the Courts of Session.

4. Learned counsel appearing on behalf of the petitioners challenges the summoning order and the complaint filed, while arguing that there is no medical evidence available on the record to substantiate the plea that the complainant's wife was pregnant and her miscarriage was done, due to the act of the petitioners, as alleged. It is submitted that there is no report of the gynaecologist on the record nor a doctor has been summoned. It is also submitted that the complainant had earlier moved an application dated 04.12.2016 to the police station on same facts and later on, got his statement recorded that he did not want to pursue with the same, which are annexed as P4 and P5 on the record. Thereafter, the complainant also filed a criminal complaint (Annexure P-9) in the court of Illaqa Magistrate, Faridabad on 18.04.2017, however, withdrew the said complaint on the same date, while making statement that he did not want to proceed further with the complaint (Annexure P-10). It is argued that the withdrawal of the said application as well as criminal complaint and thereafter, the subsequent instant criminal complaint dated 21.04.2018 on the same cause of action is not sustainable. Learned counsel for the petitioners also seeks to rely upon the medical

report placed on the record pertaining to Smt. Veena wherein, she stands admitted to civil hospital on 01.12.2016 and discharged on 14.12.2016.

5. I have heard learned counsel for the petitioners, apart from perusing the record.

6. The petitioners herein have been summoned in proceedings under the complaint case under Sections 313, 323, 452, 506 read with Section 34 of IPC and seek to challenge the summoning order as well as the complaint, by raising a ground that it was a dispute that arose between the family members on account of a dispute over a land as well as the fact that there is no proof on the record regarding pregnancy of the wife of the complainant since, the doctor had not been summoned, at the time of preliminary evidence. The petitioners herein have been summoned by an order dated 01.06.2017 to face trial under the aforesaid sections and thereafter, the matter stood committed to the Court of Session since, offence punishable under Section 313 IPC was exclusively trial by the said court and the trial is under way since there was no stay of any proceedings by the High Court.

7. At the stage of taking cognizance and summoning, the Magistrate is required to apply its judicial mind only with a view to take cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will

lead to conviction or not. It is also well settled that cognizance is taken of the offence and not the offender. Hence, at the stage of framing of charge, an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such an exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even, at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. Having considered the details of allegations made in the complaint, the statement of the complainant and other witnesses on solemn affirmation as well as documents produced on record as Ex.C1 to Ex.C5, the learned Magistrate, in the considered opinion of this, committed no error in summoning the accused persons.

8. In view of the above, the instant petition is hereby dismissed, being devoid of any merits. Needless to say, any observation made by this court hereinabove shall not prejudice the mind of the court below in any manner whatsoever.

July 12, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No