

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

247

CRM-M-10680-2017

Date of Decision: July 05, 2018

Dharminder Singh

.....Petitioner(s)

versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Harparteek Singh Sidhu, Advocate for the petitioner.

Mr. Randeep Singh Bains, DAG, Punjab.

Mr. Ishan Gupta, Advocate for the applicant/respondent No.2

Sudhir Mittal, J. (Oral)

CRM-15038-2017

This is an application for impleading applicant-Harjeet Singh Dhaliwal son of Baljinder Singh as party respondent No.2

2. Learned counsel for the applicant submits that the applicant is the complainant and that he has been prosecuted by the petitioner by filing false cases and therefore, a petition under section 182 (2) IPC was moved leading to summoning of the petitioner. Thus, the applicant has an interest in the outcome of the present petition and he should be impleaded as party respondent No.2.

3. Learned counsel for the petitioner submits that in a criminal case only a State Counsel can appear on behalf of the prosecution so as to ensure objectivity in handling of the case. He relies upon Judgment of Hon'ble the Supreme Court of India passed in case titled as **Shiv Kumar Vs Hukam Chand, 1999(4) R.C.R.**

(Criminal) 190.

4. **Shiv Kumar's** case (supra), Hon'ble the Supreme Court of India, has held that by virtue of section 301 (2) of the Code of Criminal Procedure, 1973, (for short "the Code") a private person can instruct the Public Prosecutor and can conduct prosecution if the Court permits him to do so.

5. Keeping in view the aforementioned judgment, it cannot be said that the complainant is barred from becoming a party to the case. Only, counsel representing him shall be sub-servient to the counsel representing the State.

6. In view of the above, the application is allowed and the applicant is brought on record as respondent No.2.

7. Amended Memo of Party is ordered to be taken on record.

CRM-M-10680-2017

The petitioner seeks quashing of complaint No. 205 dated 21.12.2015 pending in the Court of Sh. Bikramdeep Singh, PCS, learned Judicial Magistrate Ist Class, Malerkotla as well as summoning order dated 21.12.2015, whereby the petitioner has been summoned for having committed offence under section 182 IPC.

2. Learned counsel for the petitioner submits that the petitioner had submitted an application dated 21.05.2014 against respondent No.2 for trying to forcibly dispossess him. The said application was consigned to the record vide order dated 28.06.2014. The summoning order, under section 182 IPC, was passed on 21.12.2015 and thus, the same is barred by limitation in view of section 468 of the Code.

3. Learned counsel for respondent No.2 submits that the petitioner had got his statement recorded before the Police on 29.05.2014 and thus, bar of section 468 of the Code is not attracted.

4. Section 468 of the Code provides that no Court shall take cognizance

of an offence after expiry of the period of limitation and in respect of offence punishable with imprisonment for a term not exceeding one year, limitation is prescribed as one year. Section 182 IPC prescribes the punishment, which may extend to six months and therefore, a Court is barred from cognizance of any such offence after one year. In this case, however if the contention of learned counsel for respondent No.2 is taken as correct, the statement of the petitioner was recorded before Police on 29.05.2014 and the same was ultimately found to be false. The offence of having given false information was thus, committed on 29.05.2014 and period of limitation expired on 28.05.2015. The summoning order has been issued on 21.12.2015 and is therefore, barred by limitation

5. Accordingly, the petition is allowed and complaint/Kalendra No. 205 dated 21.12.2015 titled as “**State Vs. Gurmel Singh and others**” (Annexure P-2) as well as summoning order dated 21.12.2015 (Annexure P-4), are hereby quashed qua the petitioner.

July 05, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No