

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(i) Criminal Misc. No.M-10678 of 2014 (O&M)

Jai Bhagwan

... Petitioner

Versus

State of Haryana and another

... Respondents

(ii) Criminal Misc. No.M-12571 of 2014 (O&M)

Pardeep

... Petitioner

Versus

State of Haryana and another

... Respondents

Date of Decision : 28-09-2018

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner in Criminal Misc.No.M-10678 of 2014.

Mr. Ashit Malik, Advocate
for the petitioner in Criminal Misc.No.M-12571 of 2014.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. A.P.S.Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate
for respondent No.2.

RAJ SHEKHAR ATTRI, J.(Oral)

This order shall dispose of Criminal Misc.No.M-10678 of 2014, filed by petitioner Jai Bhagwan and Criminal Misc.No.M-12571 of 2014, filed by petitioner Pardeep for quashing of complaint No.41 dated 18.02.2012 (Annexure P-3) as well as impugned summoning order dated 15.10.2013 (Annexure P-4), passed by learned Sub Judicial Magistrate,

Gohana.

This case has chequered history. The entire story revolves around the murder of Pardeep son of Randhir. On the basis of statement of Virender Singh son of Zile Singh, FIR No.93 dated 27.06.2011 was registered under Section(s) 302/34 IPC and Section 25 of the Arms Act against Pardeep son of Ramesh. The investigation was conducted by ASI Shishan Kumar. During the trial, the material witnesses turned hostile and accused Pardeep alias Joni was acquitted of the charges framed against him vide judgment dated 27.01.2014, passed by the learned Sessions Judge, Sonipat.

Paramjeet son of Randhir (respondent No.2 herein), who is the real brother of deceased has initiated a complaint under Sections 217, 218, 219, 302, 34 and 120-B IPC against above named petitioners and some other persons alleging that all of them in connivance with each other have wrongly registered the aforesaid case FIR No.93 dated 27.06.2011 on the statement of Virender Singh of concocted facts and that the real facts have been concealed.

Learned Magistrate conducted the preliminary inquiry and summoned the petitioners Jai Bhagwan son of Hira, Pardeep son of Raj Pal and co-accused Raj Singh son of Hira, Krishan son of Ram Phal and Bhola to face trial under Sections 302 read with Sections 120-B IPC and also summoned ASI Shishan Kumar to face trial under Sections 217 and 218 IPC.

Both the petitioners assailed the impugned summoning order dated 15.10.2013 (Annexure P-4), inter alia on the following grounds:-

- (i) That during the trial of State case i.e. FIR No.93 dated 27.06.2011, respondent No.2 neither mentioned the name of petitioner anywhere nor produced any material*

against him during his statements, recorded under Section 161 Cr.P.C. and before the Ld. Trial Court.

(ii) That there is an unexplained long delay in filing the complaint as the alleged occurrence took place on 27.06.2011 and the complaint was filed by the respondent No.2 on 18.02.2012 and between that time, respondent No.2 never uttered the name of the petitioner.

(iii) That no material evidence ever came on the record during the entire trial of the State case. That is why, respondent No.2 never availed the remedy under Section 319 Cr.P.C.

(iv) That the motive of commission alleged by respondent No.2 seems unreliable as he has relied in the complaint that due to one incident that took place long back in year 2008 between deceased and petitioner, his brother was got murdered by petitioner in the year 2011.

(v) That the Ld. Trial Court has not followed the proper procedure while summoning the present petitioner. Merely on the basis of statement of complainant, petitioner cannot be summoned. There must be cogent evidence and compelling reasons on record to connect the petitioner with the alleged crime.

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

Learned counsel for the petitioners have vehemently contended that there is delay in filing the complaint; that when acquittal has been recorded after conclusion of trial vide judgment dated 27.01.2014, complaint is not maintainable and that no case for the offence under Sections 302 IPC is made out. It has also been contended that complaint (Annexure P-3) and summoning order (Annexure P-4) are hit by the principle of double jeopardy as the trial in FIR No.93 dated 27.06.2011

turned into acquittal.

On the other hand, learned State counsel has submitted that there is ample evidence to connect the accused with the crime; that there is evidence that there was a prior enmity between the petitioners and deceased Pardeep son of Randhir as deceased Pardeep had badly beaten up the petitioners and that is why criminal case FIR No.293 dated 23.12.2008, was registered against him under Sections 323, 325, 506 IPC, thereafter, petitioner had been given threats to the deceased and that there is evidence that all the petitioners in connivance with their associates had taken the deceased from his house and intentionally caused injuries to him and murdered him.

I have given my thoughtful consideration to the rival contentions.

In the instant case, CW1 Randhir Singh (complainant) while stepping into the witness box, has stated that on 27.06.2011, Pardeep son of Rajpal had come to their house and took deceased Pardeep son of Randhir with him. This evidence of last scene was not brought on record in the State case.

The contents of the complaint are entirely different from the State case i.e. FIR No.93 dated 27.06.2011. None of the petitioners was a party/accused in the State case which resulted into acquittal of accused Pardeep son of Ramesh.

In this view of the matter, the applicability of Section 319 Cr.P.C. was not the appropriate remedy rather the efficacious remedy was to file a complaint before a Magistrate.

To the mind of this Court, the complaint is maintainable in the

present form against the petitioner/accused.

The Hon'ble Supreme Court in **State of Haryana and others v. Ch. Bhajan Lal and Ors.**, 1992 AIR (SC) 604 has made the following observations:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Whether the allegations made in the First Information Report or the complaint, even if 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.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Whether, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where

there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

After going through the ratio of law laid down by Hon'ble Supreme Court in above quoted dicta, this Court is of the view that this case does not fall within the parameters laid down therein. Thus, impugned order does not suffer from any illegality or infirmity and does not warrant interference.

Without expressing any opinion on the merits of the case, both the petitions are without any merit and the same are hereby dismissed.

28-09-2018

mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No