

CRM-M-26963 of 2013

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

CRM-M-26963 of 2013
Date of Decision: 13.07.2018

Rajnish Kumar and others

....Petitioners

Versus

Ved Parkash

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Manav Bajaj, Advocate,
for Mr. Sumeet Goel, Advocate, for the petitioners.
Mr. N.S. Shekhawat, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C. prayer has been made for quashing criminal complaint No.323 dated 14.05.2011 (Annexure P-1) titled as “Ved Parkash v. Ramnish and others” under Sections 177, 182, 203, 211, 500, 504 and 120-B IPC, pending in the Court of learned Additional Chief Judicial Magistrate, Gurgaon, wherein the petitioners have been summoned to face trial under Sections 177, 203, 211, 500, 504 and 120-B IPC, vide summoning order dated 24.12.2011 (Annexure P-2).

Briefly stated, petitioner No.4 was married to the respondent on 17.10.1994. Three children born out of their marriage. However, their marriage ran into rough weathers. Consequently, the respondent got divorce from petitioner No.4 by a Court decree dated 26.03.2012 passed by learned Additional District Judge, Panipat. Before passing of divorce decree, on the complaint of the respondent, two FIRs No.383 dated 25.09.2007 under Sections 323, 325, 342, 452 and 506 IPC and No.217 dated 19.06.2010 under Sections 352, 357, 342, 363, 452, 323, 504, 506 and

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120-B IPC were registered against the petitioners at Police Stations, Panipat and Palam Vihar, Gurgaon, respectively. In FIR No.383 dated 25.09.2007, the petitioners were convicted vide judgment dated 13.01.2018 against which they preferred an appeal before this Court.

On 24.07.2010, both the sides had gone to attend the proceedings in Courts at Gurgaon. Petitioner No.2-Ramnish moved a complaint (Annexure P-3) on even date before the Commissioner of Police, Gurgaon, levelling allegations that after Court proceedings, respondent, his parents and one unknown person stopped the petitioners at Rajiv Chowk. Respondent put his pistol on the temple of petitioner No.4 and snatched gold chain of petitioner No.2 and ₹11,000/- from the pocket of petitioner No.2. Respondent, his parents and one unknown person also tried to snatch the minor daughter of petitioner No.4.

After investigation by the police at Gurgaon, complaint (Annexure P-3) filed by petitioner No.2 against the respondent, his parents and one unknown person was found false and, thus, was filed. Thereafter, respondent filed a criminal complaint before the concerned Magistrate at Gurgaon under Sections mentioned in the opening part of this judgment, wherein on the statement of the respondent-complaint, petitioners have been summoned under the aforesaid Sections vide impugned order dated 24.12.2011 (Annexure P-2).

Learned counsel for the petitioners *inter alia* contends that impugned summoning order is illegal, being passed without compliance of the provisions of Section 202 Cr.P.C. Since petitioners were the residents of Sonapat, which does not fall within the jurisdiction of Gurgaon Court,

therefore, it was incumbent upon the Magistrate to get the matter investigated from the police or himself.

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Having given thoughtful consideration to the submissions made by learned counsel for the petitioners, I find the same completely devoid of any merit in view of the fact that no specific mode or manner of inquiry is provided under Section 202 Cr.P.C. The Magistrate, before summoning the petitioners, had examined the respondent-complainant on solemn affirmation, which amounts to an inquiry within the meaning of Section 2(g) Cr.P.C. and only thereafter he has directed for issuance of process. In this regard, reliance can be placed on the judgment of the Hon'ble Supreme Court in ***Vijay Dhanuka etc. v. Najima Mamtaj etc.***, 2014(3) R.C.R. (Criminal) 793.

Now coming to the offence under which the petitioners have been summoned, it is needless to mention here that petitioners have wrongly been summoned under Section 177 IPC being barred under Section 195 Cr.P.C., inasmuch as no contempt of lawful authority or public servant was committed by the petitioners. Even no complaint was filed by a public servant or lawful authority against the petitioners, which is a mandatory requirement of Section 195 Cr.P.C.

Summoning of petitioners under Section 211 IPC is also wrong in view of the fact that filing of a complaint before police, which on investigation found to be false, does not amount to institution or cause to be instituted in criminal proceedings.

For ready reference, Section 211 IPC is reproduced hereunder:

“False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with

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imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Ingredients of Section 504 IPC are also not covered in the instant case. Therefore, petitioners have wrongly been summoned under this Section also by the trial Court.

In view of the discussion made above, instant petition is partly allowed. Impugned order qua summoning the petitioners under Sections 177, 211 and 504 IPC is set aside and as far as their summoning under Sections 203, 500 and 120-B IPC is concerned, the same is upheld.

July 13, 2018
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No