

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30142-2015 (O&M)
Date of decision: 29.05.2018

Balram

...Petitioner

Versus

Jitender Singh Chauhan

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Pavan Malik, Advocate
for the petitioner.

Mr. Abhimanyu Singh, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of criminal complaint No.232 dated 05.08.2010 (Annexure P-4), the summoning order dated 04.08.2014 (Annexure P-5) passed by the trial Court and the order dated 28.05.2015 (Annexure P-6) passed by the revisional Court, vide which the order passed by the trial Court was affirmed.

Brief facts of the case are that the respondent-complainant had filed a criminal complaint under Sections 499/500 of the Indian Penal Code (for short 'IPC') against the petitioner with the allegations that he is a law abiding citizen and is presently posted as Constable in Delhi Police. The petitioner-accused is a lawyer and at that time, he was working in Koutons

Company, Gurgaon, Haryana. Both the complainant and accused are neighbours and the petitioner, with malafide intentions and keeping the grudge against the complainant, has started filing various complaints regarding disproportionate assets of the respondent-complainant. The complaints dated 24.03.2009, 25.05.2009, 13.03.2010, 05.04.2010 and 29.06.2010 addressed to the Gurgaon Police as well as to Delhi Police, were made basis for filing of this complaint. It is further alleged in the complaint that all the complaints were verified by the competent authority and the case was referred to the Anti Corruption Bureau for verification. It is further stated in the complaint that thereafter, the authorities had dismissed the complaints filed by the petitioner-accused and the complainant, on this account, has suffered great monetary setback and his image in the society, in the eyes of his neighbours and colleagues has been lowered, as the petitioner has wrongly imputed the character of the respondent-complainant which has brought disgrace to his status in the society.

The trial Court, after recording statement of the complainant, who appeared as CW1 and two other witnesses i.e. CW2 Satish Bansal and CW3 Anil Gupta, sought a report from the police under Section 202 Cr.P.C. Thereafter, on appreciating the evidence led by the complainant as well as the report under Section 202 Cr.P.C, which supported the version of the complainant, vide impugned order dated 04.08.2014, summoned the petitioner. Thereafter, the petitioner preferred a revision petition before the revisional Court at Gurugram, which was also dismissed vide impugned order dated 28.05.2015, operative part of which is reproduced as under: -

“After hearing learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that there is no infirmity or illegality in the order passed by the learned trial Court. The perusal of the record shows that the allegations of the complainant for making out the offence u/s 499 IPC punishable u/s 500 IPC are prima facie made out from the evidence on record. The complaints filed by the petitioner have been found to have been maliciously made just to safeguard himself against the complainant. It has been found that the complainant never threatened the petitioner. For a single transaction between the parties, the petitioner is time and again making the complaints and the said complaints have been duly disposed off by the concerned authorities after proper inquiry/investigation in favour of the complainant. Even the report u/s 202 Cr.P.C. called by the learned Judicial Magistrate is in favour of the complainant.

As per as the learned counsel for the petitioner that the case of the petitioner falls under exception 8th to Section 499 IPC, this Court finds that the said exception cannot come to rescue of the petitioner at this stage. The accusation having preferred in good faith to an authorized person is the defence of the petitioner which shall be dealt with during the trial.

There is no dispute regarding the case law cited by learned counsel for the petitioner. However, the same is not applicable to the facts and circumstances of the present case. In all the cases relied upon by learned counsel for the petitioner, there was a single incident of moving the complaint against the complainant. In the present case, it is the case of the complainant that repeated complaints have been filed despite the earlier complaint having found to be false or without substance.

At the stage of summoning only a prima facie case has to

be seen to see if there are sufficient grounds for proceeding against the accused. The learned Magistrate is not required to weigh the evidence so meticulously as he is required to do so during the course of trial. The standard to be exercised by the learned Magistrate is not the same as to be kept in view even at the stage of framing of charge. No doubt, summoning in itself is also a serious issue and the order of summoning should show application of mind. Learned trial Court considered the evidence led on the record of the case and has then summoned the petitioner-accused. The order does not show any non application of mind.

In view of the aforementioned facts and circumstances, I do not find any illegality or infirmity in the impugned order passed by the learned Magistrate. The same is accordingly affirmed and the revision petition is hereby dismissed. Trial Court record along with a copy of this judgment be sent back. Parties are directed to appear before the learned trial Court on 3.7.2015 at 9.30 a.m. Revision file be consigned to record room after due compliance.”

Learned counsel for the petitioner has submitted that as per exception 8th to Section 499 IPC, the petitioner was moving the complaints against the complainant in good faith for redressal of his grievance and for bringing the true facts to notice of the authorities/employer of the complainant, as the allegations in the complaints were that the respondent-complainant has acquired disproportionate property. It is further submitted that the Vigilance Department of the Delhi Police has found that the respondent has acquired disproportionate assets after joining his service in 1989 and therefore, the offence under Section 500 IPC is not made out.

Learned counsel for the petitioner has further submitted that even from a bare perusal of the preliminary evidence led by the complainant-respondent, prima facie case is not made out for summoning the petitioner under Section 500 IPC. Counsel for the petitioner has relied upon judgments of this Court in **Jarnail Singh and others Vs. Ranbir Singh, decided vide order dated 22.11.2013 passed in CRM-M-11789-2010, Devinder Singh @ Des Raj and another Vs. State of Punjab and others, decided vide order dated 13.02.2013 passed in CRM-M-12550-2011, Ramel Dass Vs. Avdesh Kumar Upadhaya and others, decided vide order dated 21.02.2012 passed in CRM-M-16053-2011, Baldev Singh Vs. State of Punjab and others, decided vide order dated 18.09.2012 passed in CRM-M-17546-2012, Shavinder Singh Vs. State of Punjab and another, decided vide order dated 25.09.2013 passed in CRM-M-36000-2012 and Zahida Vs. Hafeez @ Hafiz, decided vide order dated 01.03.2013 passed in CRM-M-38294-2011**, wherein this Court has held that if the accused person has given a complaint to the competent authority in good faith against the complainant, as per exception 8th to Section 499 IPC, it is not defamation. It is thus submitted that since the petitioner was availing his remedy by bringing the disproportionate, acquired by the respondent-complainant, to the notice to the higher authorities, he was acting in good faith.

In reply, learned counsel for the respondent has submitted that for the purpose of passing the summoning order, only a prima face is to be made out and there is no evidence that the complainant has ever threatened the petitioner or his family members at any point of time and the authorities,

who enquired the complaints filed by the petitioner, found that in fact, it was a dispute regarding some money transaction between the petitioner and the complainant and the complaints filed by the petitioner were dismissed by observing that the same were filed in order to put pressure on the complainant through the police to effect a compromise.

After hearing learned counsel for the parties, I find no merit in the present petition.

The Courts below have recorded a finding that for the purpose of summoning an accused person, prima facie evidence has come on record from the statements of CW1 to CW3 as well as from the report submitted under Section 202 Cr.P.C. and therefore, at the stage of summoning of the petitioner, no infirmity can be found in the impugned orders.

There is no dispute with regard to the judgments cited by the petitioner, however, the same are distinguishable on facts and circumstances. In the present case, the petitioner was repeatedly filing complaints against the complainant, as detailed in the impugned complaint (Annexure P-4) and some of them were enquired and were found to be false, therefore, the petitioner, at this stage, cannot claim that his case fall in Exception 8th to Section 499 IPC, as it is not a case where the petitioner has given a single complaint, rather he has repeatedly given similar complaints to various authorities, which prima facie shows that it was not done in good faith. Even otherwise, it is for the petitioner to prove during the trial, whether the accusation made by him against the complainant was in good faith.

Even the report under Section 202 Cr.P.C., as noticed by the

Courts below, supports case of the respondent-complainant and therefore, the Courts below, after recording a finding that prima facie case is made out to summon the petitioner, have rightly summoned the petitioner.

It is well settled principle of law that at the stage of summoning, the Courts are required to find out whether a prima facie case is made out and if there are sufficient grounds to proceed against the accused person, the Magistrate is not required to evaluate the evidence at this stage. A perusal of the impugned orders passed by the Courts below shows that the Courts have applied their judicial mind in recording a finding that prima facie case is made out to summon the petitioner.

In view of the above, I find no merit in the present petition and the same is hereby dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

29.05.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No