

**Sr. No. 122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-40011-2016(O&M)
Date of decision: 29.08.2018

Puneet Kumar

.....Petitioner

versus

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Pawan Kumar, Sr. Advocate with
Mr. Rohit Kumar, Advocate
for the petitioner.

Mr. K.S.Aulakh, DAG, Punjab.

Mr. Gursimran Singh Bawa, Advocate
for respondent No.3.

Rajbir Sehrawat, J.(Oral)

This is a petition seeking for quashing of the complaint (Annexure P-4) under Section 380/457 IPC filed before the Court of Judicial Magistrate Ist Class, Amritsar, Order dated 04.01.2016(Annexure P-5) summoning the petitioner as accused in the above said complaint as well as the Order dated 18.10.2016(Annexure P-6) whereby the revision petition filed by the present petitioner; against the order of summoning; is dismissed.

The brief facts of this case are that a complaint was made by the complainant/respondent No. 3 to the police on 02.06.2013 alleging; that in the month of April, 2003, the complainant had gone to Haridwar alongwith his family. Only his son namely, Ajay Kumar, was left at his home. When the complainant returned from Haridwar then he found that the Jewellery, i.e. 4 gold bangles and 01 chain, were missing from the Almirah kept in his

house. On asking his son Ajay Kumar, the complainant came to know that during the absence of the complainant, the present petitioner had slept with the son of the complainant in his house. Therefore, complainant suspected that theft was committed by the petitioner. Accordingly, the FIR No.84, dated 2.06.2003 under Section 380 and 457 IPC was registered at Police Station Majitha. The police investigated the case. Although there was no other material available with the police to support the allegation of the complainant, however, one extra judicial confession was made by one Inderjit Marwaha. On the basis of that, the police proceeded further in the matter. However, ultimately ;the police did not find any evidence to sustain the allegation of the complainant. Therefore, the police filed cancellation report in the FIR on 14.01.2010 and the same was accepted by the Magistrate on 01.10.2011.

There is another aspect of this matter. In the meantime when the father of the petitioner had made application to the police that his son was being wrongly involved in this case, then the police had initiated proceedings (under Section 182 Cr.P.C.) against the father of the petitioner, for allegedly giving false information to the police. However, those proceedings were quashed by this Court in CRM-M-21068-2007 vide Order dated 28.04.2007. It is also on record that in the matter of bail application of the petitioner; the parties happen to have reached upto the Hon'ble Supreme Court as well. However, the petitioner was not granted bail by the Hon'ble Supreme Court.

Consequent upon the cancellation report, the matter was laid to rest by the Magistrate on 01.10.2011 by dismissing the objections filed by

the complainant. The complainant remained satisfied for about two years.

No further action was taken by the complainant against the cancellation of the FIR. However, in the year, 2013 the complainant filed CRM-M-11587-2013 before this Court, challenging the Order of the Magistrate accepting the cancellation report. As the order passed by this Court would suggest; the Court was not quite in agreement with the challenge raised by the complainant. Therefore, the complainant withdrew that criminal miscellaneous petition on 26.07.2013, although with liberty to avail appropriate remedy as per law. It is thereafter, that the complaint, from which the present proceedings have arisen, was filed on 28.10.2013.

As is rightly pointed out by learned counsel for the petitioner the complaint filed now by the complainant is the verbatim copy of the complaint made before the police earlier. This also shows meticulous drafting by legal mind. In support of the complaint, the complainant examined the same Inderjit Marwaha as CW-1, as a witness of alleged extra judicial confession, his son Ajay Kumar as CW-2 and examined himself as CW-3. However no documentary evidence of any kind has been led by the complainant in preliminary evidence.

On the basis of these statements,, the Trial Court issued the order of summoning of the petitioner. However, the summoning of the petitioner was ordered only qua Section 380 IPC. The offence under Section 457 IPC was not even found to be disclosed by the Trial Court in the complaint/testimony of the witnesses.

Aggrieved against the above said summoning order; the petitioner had filed a criminal revision petition before the Court of

Additional Sessions Judge, Amritsar. However, the Revisional Court also dismissed the revision filed by the petitioner vide order dated 18.10.2016. The reading of the order of the Revisional Court shows that the Revisional Court has gone, primarily, by the legal proposition that the Trial Court was not even required to record any reason for summoning an accused and that reasons were required to be recorded only if the complaint was to be dismissed by the Trial Court.

Aggrieved against that dismissal of the revision petition as well as the complaint filed by the complainant, the present petition has been filed by the petitioner.

Arguing the case, learned counsel for the petitioner has submitted that the complaint is an abject misuse of the process of Court. The complaint now filed by the complainant is a verbatim copy of the complaint earlier made to the police. Even the police, which had conducted deep investigation, including even initiating proceedings for resisting the investigation by the father of the petitioner, did not find any substance in the FIR got lodged by the complainant. The conclusion of the Investigating Officer attained the seal approval from the Magistrate. Not only that, even this Court had not found anything to interfere with the cancellation report submitted by the police. Hence the complaint now filed by the complainant is totally false and concocted. Hence it deserved to be quashed.

It is further contended by learned counsel for the petitioner that even in the present complaint there is no evidence worth substance present before the Court. It is contended that falsity of the claim raised by complainant is exposed by the very fact that even the Trial Court has not

found the ingredients of offence under Section 457 IPC, and the complaint qua Section 457 stands dismissed even by the Trial Court. It is contended by the learned counsel that once the offence under Section 457 Cr.P.C is not found to be made out against the petitioner, then, the offence based upon the alleged subsequent conduct of the petitioner, after entering into the house, on the face of it; is not sustainable. Learned counsel further contended that the complainant claims himself to be a Doctor, though he is not having any degree of any kind. Therefore, this reflects upon the clever disposition of the complainant. Being a clever person he has fabricated the present complaint for oblique motive. Learned counsel further submits that averments made in the complaint clearly shows that this is drafted after consultation with the legal mind. Still further, since the complaint is filed through a counsel, therefore, the mere fact that some ingredients of the offence are made out from the complaint, can not stand in the way of the petitioner for seeking quashing of the same, if otherwise, it is shown to be a misuse of the process of law.

Learned State counsel has filed reply in this case. A perusal of the reply filed by the State shows that the State stands by its version that the complaint made by the complainant does not have any substance. Therefore, the reply goes to the extent of saying that the present petition may even be allowed.

Shri Gursimran Singh Bawa, learned counsel appearing for the complainant/respondent No. 3 submits that the complaint has duly been presented before the Court. Earlier the matter was pending before the Police and the Court. After the proceedings were finally terminated before

the Police and the Court, the present complaint was filed. Witnesses have been duly examined before the Court. After appreciation of the preliminary evidence by the Court, the summoning order against the petitioner has been passed. That summoning order has even been upheld by the Revisional Court. Therefore, the petitioner can not now challenge the summoning order or the complaint; through the present petition.

Having heard the learned counsel for the parties, this Court finds that the submissions of learned counsel for the petitioner that the present complaint filed by respondent No. 3 is a misuse of the process of Court merits acceptance. Although mere filing of cancellation report of the FIR by the police may not be a sufficient ground for preventing the complainant from availing his remedies by way of filing criminal complaint, however, he has to be vigilant even while filing a criminal complaint. In the present case, the cancellation report attained its finality at the level of Magistrate on 01.10.2011. The complainant remained silent for more than 1½ years and filed the criminal miscellaneous application before this Court only on 25.06.2013. This itself reflects that even the complainant is well aware of the fact that the incident, as alleged by him, may not have happened. The complacence on the part of the complainant itself reflects upon the possibility of the complaint being false and frivolous. Had the incident actually happened, as alleged by the complainant, then the complainant would have immediately filed the complaint before the competent court. However, he has taken about two years time even after the dismissal of his objections against the cancellation report.

Otherwise also while considering the Cancellation Report filed

by the police, the Magistrate could have ordered further investigation, had he found any substance in the complaint or the defect in the investigation, or the Magistrate could have proceeded further, taking it to be a complaint case. However the Magistrate had not found any substance in the complaint. Even this Court had not found any merits in the petition filed by the complainant challenging the order of the Magistrate. In view of this the learned counsel for the petitioner is right in arguing that, with the same allegations and the same evidence, the complaint against the petitioner could not be sustained.

It is a well known fact that the memory of the person fades with the time. In the present case, admittedly the incident, even if the same is true, pertains to the Year 2003. The complaint is filed in the year 2013, and the petitioner has been sought to be summoned in the year 2016. His defence already stands prejudiced by the lapse of time. By any means, a person is not supposed to recollect the facts, to the level of his proper defence; of the happenings of a time of about 13 years back. Therefore, it would be against the interest of justice, if the present proceedings are allowed to be continued.

This Court does not find any substance in the submissions made by learned counsel for the respondent that, since the complaint discloses the offences and the summoning order has been passed by the competent court, therefore, the complaint can not be quashed. It has to be kept in mind that the criteria for quashing of complaint is a bit different then the criteria for quashing of the FIR. In case of complaint; the same is filed through a qualified legal professional. Therefore, merely because the

complaint discloses some ingredients, of the offence, does not mean that the complaint can not be quashed. Still further the complainant being an interesting party, would naturally, repeat the ipsi dixit of the complaint before the Court of Magistrate in preliminary evidence. Therefore, even the statement made by the complainant, repeating the version given in the complaint may not, strictly, stands in the way of the petitioner seeking quashing of the complaint, if it is otherwise shown to be a misuse of the process of Court. In the present case, even the Trial Court has found that the offence under Section 457 Cr.P.C. is not made out. Therefore, the allegation of the complainant; qua the petitioner entering in the house of the complainant; has not been found sustainable even by the Trial Court. There is no challenge to that order by the complainant. The Order of the Trial Court, to that extent, has already reached finality. The learned counsel for the petitioner appears to be right in contending that once the entry in the house itself is found to be non-substantial by the Trial Court, then the allegation based upon the conduct subsequent to the alleged entry into the house; can by no means; be sustained.

There is another aspect of the matter. The complainant has been persisting with this complaint for a long time. He has also taken a break in between, for about two years. Despite that he has not led any evidence before the Trial Court and not even having any document to show that the alleged gold jewellery was ever possessed by him. Except the self-serving statement of the complainant that there was some jewellery in the house there is not even a corroborating statement to the effect that there was any jewellery in the house, as such. Therefore, the allegation of the

complainant is otherwise also without basis.

So far as the orders passed by the Revisional Court is concerned; suffice is to say that the Revisional Court has dismissed the Revision filed by the petitioner by writing that the Trial Court is not even required to record a reason. Otherwise also, the Court below would not have been in a position to reject the complaint or deny summoning of the accused on the basis that the complaint itself was a misuse of the process of the Court. This aspect can be seen only by High Court in exercising its power under Section 482 Cr.P.C. The Trial Court even, if it so desired would not have been able to dismiss the complaint on this ground. Therefore, the petitioner has rightly approached this Court for seeking quashing of the complaint and the consequent proceedings arising therefrom.

In view of the above, finding the complaint and the subsequent proceedings on the complaint initiated by respondent No. 3, to be mala fide misuse of the process of the Court, the present petition is allowed. The Complaint(Annexure P-4) under Section 380/457 IPC filed before the Court of Judicial Magistrate Ist Class, Amritsar, Order dated 04.01.2016 (Anneuxre P-5) summoning the petitioner as accused in the above said complaint, as well as the Revisional Order dated 18.10.2016(Annxure P-6) whereby the revision petition filed by the present petitioner was dismissed are ordered to be quashed.

29th August, 2018

Shivani Kaushik

Whether speaking/reasoned

Whether Reportable

Yes/No

Yes/No

[RAJBIR SEHRAWAT]

JUDGE