

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

**CRM No.M-23255 of 2017 (O&M)
Date of Decision: February 26, 2019**

Sunil

...Petitioner

VERSUS

Balraj

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Sr. Advocate with
Mr.Navdeep Singh, Advocate
for the petitioner.

Mr.Jasraj Singh, Advocate
for the respondent.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. for quashing of complaint bearing No.51/3 dated 22.02.2005, summoning order dated 10.10.2006, order dated 16.09.2013 framing the charge, order dated 20.04.2017 whereby the application for discharge was dismissed and all the subsequent proceedings arising therefrom.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

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

From the record, I find that earlier FIR under Section 307 IPC

etc. dated 25.01.2003 was recorded at the instance of present petitioner

Sunil. In that case, respondent Balraj was acquitted vide judgment dated 18.02.2005. It is admitted fact that in that judgment, it is nowhere held by the Court that the evidence produced by the complainant-petitioner is false or he has given false information. Rather, perusal of the judgment shows that the witnesses have not supported the prosecution version and accused-respondent was acquitted. After acquittal, respondent Balraj, who was accused in that FIR case, has filed complaint under Sections 499, 500 IPC etc. on 10.08.2005 and petitioner Sunil and ASI Radhey Sham were summoned under Sections 195 and 211 IPC. Later on, finding prima facie case, present petitioner was charge-sheeted under Section 211 IPC. During the pendency of the trial, an application for discharge was filed by the present petitioner and vide order dated 20.04.2017, that application has been dismissed by passing the following order:-

“Arguments heard. In the present application, applicant-accused Sunil has sought the relief for dropping the proceedings as this Court has got no jurisdiction to take cognizance of the offence punishable under Section 211 of IPC, being barred by Section 195 Cr.P.C. Charge in this case was framed against the applicant-accused vide order dated 16.9.2013 passed by my learned Predecessor. The dropping of proceeding in this case, at this stage, shall amount to review of the order dated 16.9.2013 regarding framing of charge, which is not permissible under law. Accordingly, the present application stands hereby dismissed. Now, to come up on 15.5.2017 for evidence of the prosecution. Fresh summonses to all the remaining unexamined PWs be issued for the date fixed.”

I have gone through the impugned order dated 20.04.2017. It is a non-speaking order and the application was not decided on merits by discussing all the points raised in the application. Rather, it is simply stated that this is not permissible under the law as it will amount to reviewing the

order framing the charge.

Learned counsel for the petitioner argued that complaint under Section 211 IPC can be filed only by the Court or at the direction of the Court or by superior Court under Section 195 Cr.P.C., which provides that no Court shall take cognizance for the offence under Section 211 IPC except on the complaint of Court or by some official at the direction of the Court or by Court to whom that Court is Sub-ordinate. In the present case, complaint has not been filed by the Court. Therefore, the complaint in question is not maintainable. Otherwise also, the Court in the judgment dated 18.02.2005 has not held that witnesses have deposed falsely or it is a false case.

Therefore, finding merit in the present petition, the same is allowed. Complaint bearing No.51/3 dated 22.02.2005 along with all subsequent proceedings arising therefrom, are hereby quashed.

As the main case is decided, therefore, criminal misc. application, if any, also stands disposed of.

February 26, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No