

240

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26737-2015
Date of decision-26.04.2019

Sanjeet

....Petitioner

Vs.

Shri Bhagwan and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Ashwani Gaur, Advocate for the petitioner.

Mr. Ravinder Malik, Advocate for the respondent(s).

MANOJ BAJAJ, J.

Complainant-Sanjeet has brought this petition under Section 482 Code of Criminal Procedure to challenge the order dated 12.05.2015 (Annexure P-3) passed by the revisional Court, whereby it has affirmed the order dated 11.07.2014 (Annexure P-1), passed by trial Court, dismissing the criminal complaint under Sections 148, 323, 452, 506, 325, 120-B read with Sections 149 and 34 of Indian Penal Code filed by petitioner against respondents/accused.

The facts in brief are noticed below:-

- (i) The petitioner had filed a private complaint against respondents for their prosecution for the offences punishable under Sections 148, 149, 323, 452, 325, 506 and 120-B read with Section 34 of Indian Penal Code. As per the complainant, his grand father, namely, Hukam

Chand had a dispute with Gram Panchayat, Village Nandnaur regarding rasta of nine feet in front of his plot and the civil suit in that regard was decreed and possession stood delivered to sons of Hukam Chand. Thereafter, the construction was raised and resultantly the street had become narrow. The house of the accused is situated on the opposite side and the complainant and his family had a previous enmity with them.

- (ii) It was further mentioned that on 02.09.2011 at about 09/09.30 a.m. when complainant along with his mother-Santosh, brother-Manjeet and aunt-Sunita were present in the house, then accused-Neeraj who was standing on the roof, threw a brick upon the complainant. The other accused persons, thereafter, entered into the house of the complainant with the weapons and gave beatings. The accused/respondents named in the complaint were assigned specific roles with the weapons carried by them at the time of alleged assault. As per the complainant, he alongwith his mother, brother received injuries. All the accused persons were armed with iron rod, dandas, bricks and sticks. The complainant and others raised alarm and they were saved by Raj Singh, Kamlesh and Sunita. According to the complainant, his request for registration of a case before Police proved futile, however, on the contrary accused managed to get FIR No.208 dated 02.09.2011 registered against the complainant for the offences punishable under Sections 148, 323 and 324 read with Section 149 IPC.

(iii) The complaint was instituted before the Court of competent jurisdiction and in support of the complaint, the pre-summoning evidence was adduced by the complainant by examining five witnesses, namely, Sanjeet as CW-1, Sunita as CW-2, Kamlesh as CW-3, Dr.Sarita as CW-4 and Dr. Ashwani as CW-5 and tendered in evidence copies of MLR of the complaint and others as Exhibit C-3 to C-5. The trial Court after examining the complaint, statements of the witnesses and other material, proceeded to dismiss the complaint vide order dated 12.05.2015, as according to it no *prima facie* case was made out for summoning the accused persons.

Aggrieved against the said order, the petitioner/complainant carried revision before the Additional Sessions Judge, Sonipat bearing CRR No.22 of 2014. The revisional Court vide impugned order dated 12.05.2015 also proceeded to uphold the order passed by the trial Court.

On 16.11.2015, notice of motion in the petition was issued to the respondents who are represented by Mr. Ravinder Malik, Advocate. However, no separate reply was filed on behalf of the respondents.

Learned counsel for the parties have been heard and I have gone through the case file carefully.

Learned counsel for the petitioner (complainant) has contended that at the stage of summoning the accused, the trial Court is required to examine the complaint and the material on record to find out, if a *prima facie* case for commission of offence by the accused persons is made out or not. It is contended that the complaint is based on eye-witness account and

the injured have supported the case while appearing as witnesses before the Court at the stage of pre-summoning evidence. According to him, their statements were further supported by the Medical evidence and the copies of the MLR (Ex.C-3 to Ex.C-5) were proved. It is highlighted that the trial Court has committed a serious error in law in proceeding to dismiss the complaint on the basis of the presumption that the complaint has been filed as a counter-blast to the case which is pending against the complainant party at the instance of the accused persons. Learned counsel for the petitioner has further argued that the revisional Court has also proceeded to uphold the order without dealing with the specific issues raised in the revision petition relating to the evidence and material on record before the Court. It has been prayed that the orders be set aside and the accused be summoned for facing the trial in the criminal case.

Learned counsel appearing on behalf of the respondent/accused has contended that the order passed by the trial Court is reasoned order which has taken into consideration the entire material on record while dismissing the complaint. According to him, the revisional Court has correctly upheld the order passed by the trial Court as the complainant has failed to make out a *prima facie* case. It is further contended that present petition under Section 482 Cr.P.C. amounts to second revision which is prohibited in view of Section 397 (2) Cr.P.C.

Before advertng to the correctness and validity of the impugned orders passed by the Courts below, it will be appropriate to examine the relevant provisions of law which deal with issuance of process

against the accused in a complaint case. Section 190 Cr.P.C contemplates the cognizance of offence by Magistrate and one of the modes of taking cognizance is based on a criminal complaint.

As per Section 190 Cr.P.C, a Magistrate is empowered to take cognizance of offence either; (a) upon receiving a complaint of facts which constitute such offence; (b) upon a Police report of such facts and (c) upon information received from any person other than Police Officer or upon his own knowledge that such offence has been committed.

At this stage, the Magistrate simply applies his mind to the alleged commission of offences(s) by the accused. Further procedure is provided under Chapter XV of Cr.P.C, which commences from Section 200 Cr.P.C onwards whereby the Magistrate proceeds to examine the complainant and the witnesses in support of the complaint. The limited purpose of such an examination of the witnesses is to find out if there is a *prima facie* case made out against the accused for the alleged commission of offence as narrated in the complaint. Also, Section 202 Cr.P.C empowers the Magistrate to postpone the issuance of process and call for report from concerned Police Officer regarding sufficient ground for proceeding with the complaint. In case, the Magistrate is of the opinion that there is no sufficient ground for proceeding, the complaint can be dismissed under Section 203 Cr.P.C. But, if in the opinion of the Magistrate sufficient ground is made on the basis of the material on record, the process has to be issued to summon the accused under Section 204 Cr.P.C. Here, the Magistrate is not supposed

to do in depth evaluation of the material as is required for recording conviction.

It will be useful to refer the judgment passed by the Hon'ble Supreme Court in "***S.W.Palanitkar Vs. State of Bihar***", reported in **2001 (4) R.C.R. (Criminal) 572**. The relevant observations are extracted below:-

"15. In case of a complaint under Section 200 Cr.P.C. or IPC a Magistrate can take cognizance of the offence made out and then has to examine the complainant and his witnesses; if any, to ascertain whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding. The words 'sufficient ground', used under Section 203 have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction.

*16. This Court in **Nirmaljit Singh Hoon v. The State of West Bengal & Anr.**, [1973] 3 SCC 753, in para 22, referring to scheme of Sections 200-203 of Cr. P.C. has explained that "The section does not say that a regular trial of adjudging truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued*

*and he is on trial. Section 203 consists of two parts. The first part lays down the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint. In **Chandra Deo Singh v. Prakash Chandra Base, [1964] 1 SCR 639**, where dismissal of a complaint by the Magistrate at the stage of Section 202 inquiry was set aside, this Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed (p. 653) that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case"*

Now turning to the facts of the case in hand and analysis of the same reveals that it is a categoric case of the complainant that the accused persons entered the house of the complainant and caused injuries to him, his brother and mother. The offences alleged in the complaint are against human body and the injuries suffered by the complainant and others are further supported by medical evidence as well. The MLR of the injured were

produced before the Court in evidence as Exhibit CW-3 to Exhibit CW-5 and Dr.Sarita Mehra and Dr.Ashwani Kumar were examined as witnesses CW-4 and CW-5 respectively. The trial Court has attached undue significance to the delay in the MLR by observing that the occurrence took place in the morning whereas the MLR was conducted at 05.00 p.m. on the same day. Besides, trial Court has proceeded to examine the injuries narrated by the complainant with the MLR and noticed the slight variance in the same as a ground to hold that no “sufficient ground” is made out for issuance of process.

Merely because minor inconsistencies occur in respect of the seat of injuries in oral evidence as noticed by trial Court, the same cannot be taken as a convincing ground to hold that no *prima facie* case is made out against the accused persons, particularly when the trial Court has noticed that indeed the injuries were suffered by the complainant and other victims. Once the evidence adduced by the complainant indicated that injuries were caused to victims, the requirement of Section 204 Cr.P.C is fulfilled and accused have to be summoned.

Lastly, the trial Court has proceeded to presume the pendency of the FIR case against the complainant at the instance of the accused to disbelieve the version of the complainant by treating the complaint as a retaliatory step without there being any defence. This approach of trial Court is unknown to the criminal jurisprudence as it would be a matter of evidence as to whether version as contained in the FIR is truthful. Therefore, the impugned judgment passed by the trial Court and upheld by

the revisional Court is not sustainable. The revisional Court instead of exercising the jurisdiction vested in it by correcting the error committed by the trial Court has proceeded to affirm the view taken by trial Court.

It is apparent that the Courts below have proceeded to dismiss the complaint without properly appreciating the facts, evidence and law on the subject on record and therefore, this Court finds valid reasons to interfere with the orders passed by the Courts below. The argument of learned counsel for the respondents that the petition is nothing but a second revision is without any merit as the inherent powers of this Court under Section 482 Cr.P.C are meant to secure the ends of justice.

In view of the above, impugned orders dated 11.07.2014 (Annexure P-1) and 12.05.2015 (Annexure P-3) are set aside and it is ordered that respondents (accused) be summoned to face the proceedings in complaint case for the offences punishable under Sections 148, 149, 323, 452, 325, 506 and 120-B read with Section 34 of Indian Penal Code and the trial Court is directed to issue the process against the accused persons.

The petition is allowed.

(MANOJ BAJAJ)
JUDGE

26.04.2019

vanita

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