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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19079-2019 [O&M]

Date of Decision:- May 2, 2019

Amit Mittal and another

.... Petitioners

Versus

Punjab Government through Labour Inspector Grade-I, SAS Nagar

.... Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Sumeet Goel, Advocate,
and Mr. Diwakar Maheshwari, Advocate,
for the petitioners.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure (for short “the Code”) is for quashing of Criminal Complaint No. COMA-20/2019 dated 27.02.2019 (Annexure P/1) titled **Punjab Government through Labour Inspector Grade-I, SAS Nagar Vs. Sukanto Aich and another** and the impugned order, dated 06.03.2019 (Annexure P/2) passed by learned Judicial Magistrate Ist Class, SAS Nagar, summoning the present petitioners for violation of Sections 25-O and 25-R of Industrial Disputes Act, 1947 (for short, “the Act”) and all other subsequent proceedings arising therefrom.

2. Learned counsel for the petitioners contended that the complaint,

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Annexure P/1 and the summoning order, Annexure P/2 are misuse of the process of law and the same be quashed while invoking the inherent powers under Section 482 of the Code. The relief claimed for in this petition can only be granted by this Court in exercise of powers under Section 482 of the Code because the documents which the petitioners want to produce in defence cannot be looked into in revision under Section 397 Cr.P.C. by the Court of Sessions.

3. On the ground of maintainability of the present petition seeking quashing of the complainant, Annexure P/1 and the summoning order, Annexure P/2, learned counsel for the petitioner placed reliance upon the judgments of Supreme Court in **Prabhu Chawla Vs. State of Rajasthan and another, 2016 (4) R.C.R. (Criminal) 270** wherein scope and ambit of Section 482 vis-a-vis Section 397 of the Code was discussed and Hon`ble Apex Court observed that powers under Section 482 of the Code begin with a non-obstante clause and there can be no total ban on the exercise of such course and jurisdiction. While arguing on the point of maintainability of petition under Section 482 Cr.P.C., learned counsel for the petitioners contended that even if alternative remedy by way of revision, as per Section 397 Cr.P.C. is available to the petitioners, such petition for quashing of summoning order cannot be dismissed only on the premise that alternative remedy was available to the accused persons. On this point, reliance was also placed on the decision of Hon`ble Supreme Court in **Dhariwal Tabaco Products Ltd. and others Vs. State of Maharashtra and another, 2011 AIR (SC) (Crl.) 1846.**

4. Having considered the matter in its entirety, this Court is of

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the considered view that as regards to the maintainability of the petition, there is no dispute that as per provisions of Section 482 of the Code, the Court has ample powers to quash the proceedings including filing of complaint and the summoning order, if the act amounts to mis-carriage of justice. Such a view was taken by Hon`ble Apex Court in **Prabhu Chawla's case (supra)**. In the light of this, the facts and entire background of the present case is required to be looked into.

5. As regard to maintainability of the present petition under Section 482 of the Code though, there is no limit on the powers of the Court under Section 482 of the Code, but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings should be exercised very sparingly in the rarest of rare cases. Such a view was taken by Hon`ble Larger Bench of the Apex Court (consisting of Hon`ble Seven Judges) in **Madhu Limaye Vs. The State of Maharashtra, AIR 1978 SC 47**, wherein Hon`ble Supreme Court observed as under:-

“9. At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions :-

- (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party ;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

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6. Law on the point is well settled that at the time of summoning of accused, the Court is to see *prima facie* evidence and not to go in the detailed enquiry. The Court must apply the test as to whether the uncontroverted allegations as made out from the record of the case and the documents submitted thereon establish the offence or not. If the Court has to observe that the matter requires examination of evidence and material on record to determine whether there is sufficient material on the basis of which, the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they would constitute an offence and if so, is it an abuse of the process of Court leading to injustice. If full-fledged enquiry is required to appreciate the evidence collected, then powers under Section 482 of the Code should not be exercised and the in the present case, no case is made out to quash the proceedings.

7. Learned counsel for the petitioners has raised certain points challenging the summoning order and the complaint itself, but certainly, all these pleas can be taken by way of revision petition before the Court of Sessions as per law laid down by Hon`ble Supreme Court in **Mohit alias Sonu and another Vs. State of U.P. and another, 2013 (3) R.C.R. [Criminal] 673**, wherein the Apex Court has observed that the petitioners ought to have challenged the order by way of revision petition under Section 397 Cr.P.C. and not by invoking inherent jurisdiction of the High Court under Section 482 Cr.P.C.

8. In view the above, the present petition under Section 482 Cr.P.C., is not maintainable and stands dismissed with liberty to the

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petitioners to avail the remedy of filing a revision petition before the Court of Sessions under Section 397 Cr.P.C.

May 02, 2019
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
Yes