

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

CRM-M-41013-2018 (O&M)
Date of decision : 05.11.2019

Rimple Wadhwa and others

...Petitioners

Versus

Gaurav Wadhwa

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Ishma Randhawa, Advocate for the petitioners.

Mr. Alankar Narula, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

After hearing learned counsel for the parties at length, this Court is of the considered opinion that this is a fit case in which proceedings arising out from criminal complaint are required to be quashed at the outset.

Petitioner No.1 and respondent-complainant are husband and wife married on 04.12.2003. They are blessed with a son namely Divyansh on 19.08.2008. It is claimed that parties were residing together in a rented accommodation in 2010 and later on husband-respondent-complainant moved out and started residing separately. Wife lodged a complaint with the police under Sections 406, 498-A, 34 of the Indian

Penal Code on which FIR was registered against respondent on 06.06.2014. Wife also filed a complaint under the Protection of Women from Domestic Violence Act, 2005 on 19.03.2014.

Respondent lodged a report with the police alleging that wife and other petitioners who are relatives of the wife, have stolen certain household articles. The police after investigation did not find any substance therein. The respondent, thereafter, filed a criminal complaint in which petitioners have been summoned. A bare look at the articles, list whereof has been attached with the complaint establishes that all the articles are household articles.

Being husband and wife, the household articles are in their joint custody. Once, the articles are in joint custody, one of the member of the marriage cannot be alleged to have stolen these articles. Still further, facts as noticed above, have not been controverted by filing any reply to the petition.

It is really strange that the Judicial Magistrate Ist Class, passed the order of summoning (issued process under Section 204 Cr.P.C.) without application of mind. Judicial Magistrate had passed the order merely on the ground that the vehicle bearing registration No.DL-3CAK-9989, which is in the name of father of respondent-complainant is parked at the residence of accused. While passing an order of summoning, the Court is duty bound to form an opinion on the basis of the material available on the record. Such forming of an opinion has to be reflected in the order. In the present case, the petitioners have been

summoned under Sections 380/411/120-B of the Indian Penal Code. However, on reading of the order, it is apparent that the learned Judicial Magistrate did not form an opinion as to how offence as noticed above, is made out. As noticed above, Judicial Magistrate only passed an order on the basis of the Action Taken Report by the police that the vehicle is found parked at the residence of the petitioner. Summoning of the accused is a serious matter. The concerned Magistrate before passing an order is obligated upon to apply its mind and form an opinion.

In view thereof, criminal complaint and subsequent proceedings arising therefrom, are hereby quashed.

Accordingly, the present petition is allowed.

Let a copy of the order be forwarded to the concerned Magistrate, who passed the order impugned herein.

05.11.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No