

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41114-2014 (O & M)
Date of Decision:03 October, 2019

Raj Kumar

...Petitioner

Versus

Guranditta Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Aman Dhir, Advocate
for the petitioner.

Mr. K.S. Brar, Advocate
for respondent No.1.

Ms. Sudeepti Sharma, Addl. A.G., Punjab.

MANOJ BAJAJ, J.

Raj Kumar - petitioner has filed this petition under Section 482 Cr.P.C. for quashing of complaint No.49/1 dated 20.04.2009 titled as Guranditta Singh versus Raj Kumar and others, under Sections 467, 468, 471, 500 and 120-B IPC (Annexure P-1) and the summoning order dated 01.07.2013 (Annexure P-2), which was upheld by the Revisional Court order dated 04.10.2014 (Annexure P-3).

Guranditta Singh (respondent No.1) brought a criminal complaint against Raj Kumar (accused No.1) and Des Raj (accused No.2) on the ground that they both were engaged in the business of 'Araht' (Commission Agents), and the complainant used to sell his crop to them. Approximately 9-10 years back, Raj Kumar got signatures and thumb

impression of complainant on blank pronote on the pretext of security, with

assurance to return it upon demand. The land measuring 20 killas belonging to Raj Kumar was being cultivated by complainant on lease, who had been selling his crop to Raj Kumar. According to him, the said accused in the year 2004-05 did not clear the account whereas the complainant had spent money on the crops and the accused got back his land from the complainant. The complainant continued with his requests to accused to clear the account, however, instead of clearing the same, Raj Kumar brought a civil suit for recovery against the complainant in connivance with his permanent witnesses by preparing fake and fictitious pronote.

Further, it was pleaded that accused No.2 (Des Raj) was engaged in the same business, who was friend of Raj Kumar and they both obtained signatures and thumb impression on blank pronotes and receipts and become witnesses of each other and file the suit for recoveries against various farmers. About 2 ½ years back, Buta Singh, Sardool Singh, Beant Singh and Jagtar came to the complainant and asked if Buta Singh had taken a loan of ₹2,50,000/- from accused Raj Kumar in the presence of co-accused Des Raj and complainant. The complainant responded negatively as he even did not know Buta Singh and Des Raj and asked them to show the copy of the pronote. About 3 months back, they (Buta Singh etc.) again came to the complainant and brought a copy of pronote and receipt dated 10.01.2002 and after seeing the same, the complainant told that the receipt do bear his signatures, but the same were fake.

According to the complainant, the above mentioned persons brought disgrace to him in the area as the complainant was giving false evidence in the Court in favour of accused Raj Kumar. The complainant further obtained the report of the finger print expert which revealed that the

signatures on the pronote do not belong to him. On these broad allegations, the complaint was filed.

In support of the complaint, complainant examined 6 witnesses, and adduced documentary evidence i.e. the attested copy of pronote and receipt Ex.CW-4/A and Ex.CW-4/B; the written statement filed by the complainant in a suit for recovery brought by Raj Kumar CW-4/C and the report of hand writing expert Ex.CW-5/1. After examining the evidence, trial Court vide its order dated 01.07.2013 proceeded to summon petitioner Raj Kumar as accused for commission of the offence punishable under Sections 467, 468, 471 IPC, however it refused to summon Des Raj for lack of sufficient material.

Aggrieved against this order of summoning, the parties preferred respective revision petitions before the Sessions Judge, Muktsar Sahib, which were decided by a common judgment dated 04.10.2014 (Annexure P-3). The Revisional Court proceeded to dismiss the revisions and upheld the order of summoning dated 01.07.2013.

Aggrieved against the order of Revisional Court, the present petition has been filed to challenge the proceedings pursuant to the impugned complaint and the summoning order dated 01.07.2013.

Learned counsel for the petitioner has argued that the complaint was highly belated which was filed in the year 2009 relating to the pronote dated 10.01.2002, whereupon the alleged signatures of complainant were forged. He has further contended that the suit brought by the petitioner on the strength of the pronote dated 10.01.2002 against Buta Singh was decreed and the said decretal amount was paid by judgment-debtor Buta Singh approximately 7-8 years ago. He submitted that Buta Singh was not

examined as a witness by respondent No.1 in support of his complaint and, therefore, the trial Court committed a serious error of law in summoning the petitioner as an accused. It was further pointed out that the report of the hand writing expert was not worth believing as the disputed signatures were compared from a photocopy of the pronote. Reliance was placed upon **“Amar Nath vs. State of Punjab and others”** passed in CRR No.887 of 2012 decided on 12.12.2012 and **“Balbir Singh vs. Bhim Singh and others”** 2015(35) R.C.R. (Criminal) 144. He submits that the complaint was filed as a counter blast to the civil suit brought by the petitioner for recovery against the complainant, and RSA bearing No.2466 of 2013 filed by complainant is pending before this Court. In the end, it was argued that the complaint is nothing but an abuse of the process of law and, therefore, the same deserves to be quashed.

Notice of motion was issued, however, no reply has been filed on behalf of the complainant/respondent No.1.

On the other hand, learned counsel appearing on behalf of the complainant has opposed the prayer primarily on the ground that the complainant adduced sufficient documentary material on record to establish prima facie commission of offence by the petitioner. It was submitted by him that the revisional Court has upheld the summoning order passed by the trial Court and, therefore, the present petition may not be maintainable which amounts to second revision. It is submitted by learned counsel that the petition does not warrant any interference and deserves to be dismissed. Reliance has been placed upon the judgments of Hon'ble the Supreme Court in the cases of **Shivjee Singh versus Nagendra Tiwary and others, 2010**

others, 2010 (8) SCC 775 and the judgment of this Court in the case of Sibu versus Mohinder Singh 2002 (1) RCR (Criminal) 165 to contend that at the stage of summoning only prima facie case is to be seen.

Learned counsel for the parties have been heard and with their assistance, I have gone through the case file carefully. The whole issue revolves around the pronote dated 10.01.2002 (Ex.CW-4A) and the correctness of the signatures of the complainant. A perusal of the complaint reveals that the pronote in question was executed in January, 2002 which came to the knowledge of the complainant in October, 2006 i.e. about 2 ½ years prior to filing of the complaint (filed on 28.04.2009). The knowledge of this pronote was acquired by complainant through Buta Singh and others, who had shown the alleged pronote to the complainant. It may be noticed here that, a civil suit was filed by the petitioner against the complainant for recovery of amount in the year 2006, which was contested by the complainant by way of filing the written statement dated 12.01.2007 (Ex. CW-4/C). A careful reading of this written statement reveals that the alleged forgery of signatures of the complainant upon the pronote (Ex.CW-4/A and CW-4/B) executed by Buta Singh in favour of the petitioner was not mentioned, as it only described the petitioner as habitual of filing cases against various persons, on the basis of blank pronotes and receipts. One such example quoted in the written statement was in respect of a suit by the petitioner against one Jasvir Singh. Therefore, it is not understandable as to why the example of pronote in favour of Buta Singh was not mentioned, if the complainant himself was a witness to the said pronote. The allegations, therefore, raised in the complaint in the year 2009 are apparently

by Buta Singh, who was not examined as a witness.

During the course of the argument, it was not disputed by the learned counsel for respondent that the civil suit No.632-1-17 dated 20.08.2002 titled as Raj Kumar vs. Buta Singh for recovery was decreed on 20.02.2003. The said record was produced by CW-4 Ved Parkash Record Clerk, Record Room, Judicial Magistrate, Gidharbara before the Court on 20.02.2003 and the said decree was further satisfied by Buta Singh. Therefore, it is clear that the contents of the complaint and the evidence brought on record by complainant itself are self contradictory. It is not disputed by learned counsel for the complainant that suit filed by the petitioner was pending, when impugned complaint was instituted. However, during pendency of this petition, the civil suit and appeals brought by petitioner stand decided against him. There was sufficient documentary evidence on record brought by the complainant himself which renders the accusation of forgery of his signatures on the pronote as unbelievable, particularly when the complaint is based upon hearsay evidence.

Further this Court finds that it will not be safe to rely upon the report of the hand writing expert, who had compared the disputed signatures from the photostat copies of the pronote. Section 73 of the Evidence Act deals with the comparison of signatures, writing or seal with other admitted or proved signatures. The judgments relied upon by learned counsel for the petitioner clearly laid down the law that the comparison based upon photocopies would not be a valid examination. In **Surjit Rai versus Prem Kumar Khera**, 1995 (2) PLR 140, this Court observed as follows:

"Original agreement has not been produced on the record. In my view, signatures cannot be compared from

the photocopy of the agreement because in these days of advance technology, signatures of a person can be lifted from one document and put on another document by super imposition."

In view of the above, it is clear that the trial Court has ignored the contradictory material produced on record by complainant himself before issuing the process against the petitioner. The Revisional Court also failed to exercise the jurisdiction vested in it by not curing the error of law committed by the trial Court. The judgments relied upon by the learned counsel for the complainant are regarding issuance of process under Chapter XV Cr.P.C. against the accused and the same may not be applicable in the facts and circumstances of the case. There is no doubt that the Court once convinced about existence of prima facie evidence regarding commission of an offence then it has to issue the process against the accused, but in the given set of facts and circumstances of the present case, the material on record is not enough to make out a prima facie case as discussed above.

Time and again, this Court as well as the Hon'ble Supreme Court of India have reminded the Courts that the Magistrate should pass the summoning order carefully and judiciously after examining the material on record and not in a mechanical manner. 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 complain-ant 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.

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23. Many a time, complaints are filed under Section 200 Criminal Procedure Code, 1973 by the parties with an oblique motive or for collateral purposes to harass, to wreck vengeance, to pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract touching commercial transactions instead of approaching civil courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no action could be taken against them on criminal side. A wrongful or illegal act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that necessary ingredients of constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act

constituting an offence but not to proceed against the accused in a criminal prosecution. Hence before issuing a process a Magistrate has to essentially keep in mind the scheme contained in the provisions of Section 200-203 of Criminal Procedure Code keeping in mind the position of law stated above and pass an order judiciously and not mechanically or in routine manner(emphasis supplied).

It is clear that the trial Court has proceeded to issue the process without properly appreciating the facts, evidence and law on the subject 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 prevent the abuse of the process of law.

In view of the above, this Court has no hesitation in holding that the complainant has failed to make out a prima facie case against the petitioner in respect of the commission of the alleged offence under Sections 467, 468, 471, 500 and 120-B IPC and consequently the summoning order is also not sustainable.

Resultantly, the petition is allowed and the Revisional Court order dated 04.10.2014 along with the summoning order dated 01.07.2013 passed by the trial Court are set aside. The impugned complaint No.49/1 dated 20.04.2009 titled as Guranditta Singh versus Raj Kumar etc. under Sections 467, 468, 471, 500 and 120-B IPC is dismissed.

03 October, 2019
sheetal

(MANOJ BAJAJ)
JUDGE