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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22535-2019

Date of Decision : May 20, 2019

Manpreet Singh

.... Petitioner

Versus

Malkit Singh and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Navkiran Singh, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing order dated 25.03.2019 (Annexure P/6), Complaint titled **State through Pawan Kumar Reader of the Court Vs. Major Singh etc.** dated 3.4.2019 (Annexure P/7) and summoning order dated 4.4.2019 (Annexure P/8) passed by learned Judicial Magistrate Ist Class, Barnala and summons dated 23.04.2019 (Annexure P/9) issued against the petitioner.

2. Learned counsel for the petitioner has mainly contended that the order dated 4.4.2019 (Annexure P/8) passed by learned Magistrate whereby the petitioner was ordered to be summoned, is not a speaking and reasoned judicial order as the petitioner has not been made aware of the allegations levelled against him. To support his argument, he has placed reliance upon the judgment from the Co-ordinate Bench of this Court in

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Sajeev Kumar Sharma Vs. State of Punjab, 2006(3) R.C.R. (Criminal)

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3. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that the petitioner is primarily aggrieved by the order dated 4.4.2019 (Annexure P/8) passed by learned Magistrate. The same is extracted below :-

“ As per law when the complaint is moved by public servant then there is no need to record the preliminary evidence. Let the notice to accused be issued for 17.05.2019.”

4. It is not disputed that the complaint (Annexure P/7) has been filed by State through Pawan Kumar, Reader (who is a public servant) of the Court of learned learned Magistrate, Barnala under Sections 193/196 and 199 IPC.

5. Similar matter was before Hon`ble Apex Court in **Dy. Chief Controller of Imports and Exports Vs. Roshanlal Agarwal and Ors., 2003(2) R.C.R. (Criminal) 110**, whereby Hon`ble Apex Court observed as under:-

“8. The second reason given by the High Court for allowing the petition filed by the respondents (accused) is that the order passed by the Special Court taking cognizance of the offence does not show that the learned Magistrate had even perused the complaint or that he had applied his judicial mind before taking of the cognizance. The order passed by the learned Magistrate reads as under :

"Cognizance taken. Register the case.

Issue summons to the accused."

9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not, whether there is sufficient ground for

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conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in **U.,P. Pollution Control Board V. M/s Mohan Meakins Ltd. and ors, 2000 (2) R.C.R. (Criminal) 421** and after noticing the law laid down in **Kanti Bhadra Shah Vs. State of West Bengal, AIR 2000 Supreme Court 522 : 2000 (1) RCR (Crl.) 407**, it was held as follows :

"The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

This being the settled legal position, the order passed by the learned Magistrate could not be faulted on the ground given by the High Court."

6. Identical view was taken by Hon`ble Apex Court in **National Small Industries Corporation Ltd. Vs. State (NCT of Delhi) and others, 2009(1) R.C.R. (Civil) 10.**

7. More so, the impugned orders passed by learned Magistrate can be challenged before the Court of Sessions as per provisions of Section 397 Cr.P.C. For facility of reference, Section 397 Cr.P.C., is extracted below:-

"397. Calling for records to exercise powers of revision. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

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(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

8. The above quoted provisions give power to move before the Court of Sessions as well for challenging the orders by way of revision.

9. Section 482 Cr.P.C. deals with inherent powers of this Court. It is well-established principle of law that inherent powers conferred on this Court under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too, to correct patent illegalities of when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed, because they are initiated illegally, vexatiously or without jurisdiction and where the allegations, even if they they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. The content and scope of power under Section 482 Cr. P.C. were examined in considerable details by Hon`ble Apex Court in **Madhu Limaye v. State of Maharashtra**, 1978 AIR (SC) 47, and it was held as under:

"The following principles may be stated in relation to the exercise of the inherent power of the High Court:-

(1) **that the power is not to be restored 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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10. The main prayer of the petitioner in the present petition is to quash the impugned orders, Annexures P/6 and P/8 passed by learned Judicial Magistrate. Apparently, the petitioner has an alternative remedy of filing revision against the said orders before the Court of Sessions.

11. In view the above, the present petition under Section 482 Cr.P.C. is not maintainable and is dismissed as such. However, the petitioner shall be at liberty to avail alternative remedy as available under the law.

(SHEKHER DHAWAN)
JUDGE

May 20, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes