

201.

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

CRR-2332-2017 (O&M)

Date of decision: 22.08.2019

ARCHANA

.... Petitioner

versus

RAM CHANDER AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Mukesh Rao, Advocate, for the petitioner.

Mr. Sanjay Vashisth, Advocate, for respondents No.1 to 7.

Ms. Gaganpreet Kaur, AAG, Haryana, for respondent No.8.

HARI PAL VERMA, J.

The petitioner-complainant has filed the present revision petition impugning the order dated 06.04.2017 passed by the learned Additional Sessions Judge, Bhiwani, whereby the revision filed by the respondents-accused against the order dated 07.11.2016 passed by learned Sub Divisional Judicial Magistrate, Charkhi Dadri, was allowed and the order passed by the learned Magistrate was set aside. Further, the trial Court was directed to consider the fact that as the complaint involves separate offences against separate accused on different dates committed in a year, therefore, the trial Court to decide the matter on summoning afresh.

Briefly stated, the petitioner-complainant filed a complaint before the learned Sub-Divisional Judicial Magistrate, Charkhi Dadri under Sections 147, 148, 323, 324, 337, 342, 354, 354-A, 355, 452, 455, 456, 458, 504, 506, 509/34 of IPC against the respondents-accused. As per the complaint, the petitioner and Smt. Meena wife of Soni Ram, both household

ladies, are residing along with their husbands and children in Rao Mohalla, Ward No.18, Charkhi Dadri. The complainant and husband of Smt. Meena are shopkeepers. The accused, who belongs to the same family, nursed a grudge against the family of the complainant and wanted to forcibly capture the ancestral land belonging to the family of complainant regarding which a civil suit titled as “Munshi Ram and Ved Parkash and others” had been dismissed by the trial Court on 03.05.2003. On 21.03.2013, when the complainant and Meena were present in their residential house, at about 7.30 PM, accused Nos.1 to 4 (respondents No.1 to 4 herein) along with four other unknown persons, came to the house of the complainant armed with *lathis* and *dandas* with common intention. The accused abused the complainant and Meena, and misbehaved with them. However, when the complainant and Meena opposed them (accused), Jai Bhagwan-accused (respondent No.2) started dragging the complainant outside the house and caught hold of her *sari*, due to which, the *sari* of the complainant was undraped. Accused Kamal (respondent No.3) had dragged the complainant of her hair. Jai Bhagwan gave a *danda* blow on the head of the complainant. Another accused Pankaj (respondent No.4) gave *danda* blow on the back, arm and thigh of the complainant. The other four unknown persons gave fist and kick blows to the complainant and dragged her of her hair. Pankaj pushed Meena and gave beatings to her. The complainant and Meena called for help and on hearing them, Ramdhan, Pawan, Ved Parkash and Sher Singh @ Chhotu came at the spot and on seeing them, the accused persons fled away from the spot with their respective weapons. However, while leaving, the accused persons have threatened them (complainant) of life.

In this regard, a complaint was made to the police, but no action against the accused persons was taken by the police. One Yogesh had taken the complainant and Meena to a hospital, where they were medico-legally examined. Though the statement of the complainant was recorded, but neither the same was read over to her nor a copy thereof was provided to her. The complainant and Meena were discharged from the hospital on 23.03.2013. After discharge, when they reached their house at 12 o'clock, at that time, Sushila, Pinki and Priyanka started abusing the complainant, her husband and Meena. The accused persons proclaimed that they will teach them a lesson for lodging a complaint. The complainant and Meena were pushed on floor by Sushila, Pinki and Priyanka. However, when they called for help, Rupansh, Parvati and others came for their help and the accused persons fled away from the spot. However, while leaving, they threatened them of their life. Number of complaints were given to the authorities concerned, but no action was taken, rather a Calendra under Section 107/151 of Cr.P.C. was issued on 29.03.2013. Calendra was also issued to the complainant party and an FIR No.135 dated 29.3.2013 under Sections 147, 148, 323, 325 of IPC was registered in collusion with the accused persons. When despite repeated requests, no action was taken by the police against the accused persons, the complainant constrained to file the complaint.

The learned Magistrate vide order dated 07.11.2016, finding a prima facie case for commission of offence under Sections 147, 323, 354, 354-A, 355, 452, 506, 509 read with Section 149 of IPC, issued summoning of the accused.

Aggrieved with the aforesaid order of summoning dated 07.11.2016, the accused-respondents filed a revision before the learned Additional Sessions Judge, Bhiwani and vide judgment dated 06.04.2017, the learned Additional Sessions Judge accepted the revision, set aside the order passed by the learned Magistrate and further directed the trial Court to consider the fact that the complaint involves separate offence against separate accused on different dates committed in a year and, therefore, decide the matter on summoning afresh.

It is against the aforesaid judgment dated 06.04.2017 passed by learned Additional Sessions Judge, the petitioner-complainant has filed the present revision petition.

Counsel for the petitioner has argued that the learned revisionary Court has totally gone wrong while observing that in the complaint there are occurrences of three dates, whereas as per the version of the complainant, the occurrences are of two dates only. Firstly on 21.03.2013 when accused Nos.1 to 4 along with unknown persons were attributed with injuries to the complainant and Meena, de-robbing, hurling filthy abuses and causing injuries to them, which was witnessed by PWs Ram Dhan, Pawan, Ved Parkash and Sher Singh. The second occurrence is dated 23.03.2013 when after discharge from hospital, the petitioner-complainant, her husband and Meena have reached their house, they were attacked by the accused. The third date is 29.03.2013, which was taken by the learned revisionary Court to be the date of occurrence, has been mentioned in the complaint as the date on which the police, instead of taking action on the petitioner's complaint, booked the complainant party. The

learned Magistrate has passed a reasoned order while taking note of entire material on record. Summoning order cannot be set aside merely on the ground that the summoning order is not speaking in nature. He has relied upon judgment of Hon'ble Apex Court held in ***Nupur Talwar Versus Central Bureau of Investigation-2012(11) SCC 465***. At the time of summoning of the accused, the Magistrate is not required to examine the merits of the material.

Counsel has further argued that the respondents challenged the summoning order dated 07.11.2016 before the learned Additional Sessions Judge by way of revision, but no stay was granted by the revisionary Court, though an application for adjournment was made before the trial Court, which was dismissed by the trial Court on 04.01.2017 and this order was never challenged. The respondents-accused put their appearance and after recording the pre-charge evidence, the learned trial Court, after perusal of the entire evidence in the pre-charge, directed to frame charges against the respondents-accused and they were charge-sheeted accordingly vide order dated 27.01.2017 (Annexure P-5). In the present case, only one witness, namely, Dr. Tej Singh was called for cross-examination by the respondents and after his cross-examination, the evidence of the petitioner-complainant was closed and the case was fixed for recording the statement of the accused under Section 313 Cr.P.C. Thereafter, the case was fixed for defence evidence and arguments at least 8 times. The case having reached the final stage was well within the knowledge of the revisionary court, as the trial Court file was summoned by the revisionary court. By setting aside the summoning order and asking the trial Court to pass a fresh summoning

order, the learned revisionary Court has quashed the entire trial proceedings already conducted by the trial Court. Virtually the revisionary Court has exercised the inherent powers which can otherwise be exercised only by the High Court under Section 482 Cr.P.C. The setting aside of summoning order at such an advance stage when the case was fixed for defence evidence and arguments, has the effect of acquittal of the respondents-accused and the Magistrate cannot summon them again. There is no challenge to the order of framing of charge and even after setting aside of the summoning order, the charge-sheet against the respondents-accused is still in existence.

Counsel for the petitioner has placed reliance on the judgment of *Lajpat Sharma and others Versus State of Haryana and another-2016(4) R.C.R. (Criminal) 430* and while inviting attention of this Court to paras 13 and 14 of said judgment, has argued that at the stage of taking cognizance and summoning the accused, the summoning court is to find out as to whether prima facie case has been made out for summoning of the accused persons or not. Summoning court is not required to consider the defence version or materials or arguments or even to evaluate the merits of the materials or evidence of the complainant.

Heard.

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot possibly be set into motion as a matter of course. The order of the Magistrate, summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof, relatable to the

relevant provisions of the offences and that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of preliminary evidence. The accused cannot be summoned in a routine manner, in view of the law laid down by the Hon'ble Apex Court in case ***M/s Pepsi Foods Limited Versus Special Judicial Magistrate, 1998 AIR (SC) 128***. The ratio of the law laid down in the aforesaid judgments “mutatis-mutandis” is fully attracted to the facts of the present case and is the complete answer to the problem in hand.

The Hon'ble Apex Court in ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Versus Jagdish Sharan Varshney and others-(2009) 4 Supreme Court Cases 240*** exhibiting the importance of passing speaking and reasoned order. Para No.8 of the said judgment reads as under:-

*“The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in **S.N.Mukherjee V. Union of India**, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.”*

A mere recital that the prima facie case is made out, is not sufficient for the trial Court to summon the accused. The argument that during the intervening period, the trial Court has gone at an advance stage of trial is of no consequence when a legal right has accrued to the accused and

they have availed the same before the higher court. The intervening proceedings pending between the parties are always subject to the culmination of the proceedings before the higher Court. Therefore, the argument of the counsel for the petitioner that the charge have been framed and the complainant's evidence has been recorded is of no relevance. The relevant question before this Court is the legality or illegality of the order passed by the revisionary court. Since the revision petition has been allowed, a right has accrued to the respondents by virtue of an order passed by the revisionary court. Therefore, this Court finds that there is no illegality in the order passed by the revisionary court whereby the order of summoning has been set aside. While setting aside the order of summoning dated 07.11.2016, the learned revisionary court has given liberty to the trial Court to decide the matter by summoning afresh, with a further recital that the trial Court is not obliged to hear the accused before forming an opinion in view of the law laid down in ***Manharibhai Muljibhai Kakaidla and another Versus Shaileshbhai Mohanbhai Patel and others-2012(4) RCR (Criminal) 689.***

In view of above, this Court does not find any reason to interfere in the order passed by the revisionary court. Accordingly, the present petition is dismissed.

(HARI PAL VERMA)
JUDGE

22.08.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No