

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

CRM-M-21158-2013 (O&M)
Date of Decision:-.08.12.2020.

Parmeshwari Devi and another.

..... Petitioners

Versus

State of Punjab and another.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Vikas Bahl, Senior Advocate, with
Ms. Drishtana Singh and Ms. Palak Jain, Advocates,
for the petitioners.

Mr. Gaurav Garg Dhuriwala, Senior DAG, Punjab.

Mr. Puneet Sharma, Advocate, for the second respondent.

SANJAY KUMAR, J. (Oral):

The first petitioner herein is the mother of the second petitioner and the mother-in-law of the second respondent. By way of this petition under Section 482 Cr.P.C., the mother and son seek quashing of the second respondent's Complaint No.2 of 08.01.2009 filed against them and some others under Sections 307, 452, 323, 148 and 149 IPC. They also challenge the order dated 19.03.2012 passed thereon by the learned Sub-Divisional Judicial Magistrate, Sunam, summoning all the accused to face trial for offences punishable under Sections 452, 323, 148 and 149 IPC.

By order dated 05.07.2013, this Court noted the contention of the petitioners that a compromise had been effected between the parties but despite the same, the second respondent had pursued the subject complaint and got the summoning order issued to the petitioners, thereby misusing the process of law. This Court also took note of their contention that an earlier FIR relating to the same events had been mentioned in the complaint but the same was not taken into consideration by the learned Magistrate, while passing the summoning order. This Court accordingly directed the trial Court to adjourn the case. This interim order is operative as on date. The second respondent filed an application to vacate the said order.

However, as comprehensive arguments were advanced by Mr. Vikas Bahl, learned senior counsel for the petitioners; Mr. Gaurav Garg Dhuriwala, learned Senior Deputy Advocate General, Punjab, for the first respondent-State; and Mr. Puneet Sharma, learned counsel for the second respondent, the main case itself is amenable to final disposal at this stage.

At the outset, it may be noted that the issue of maintainability of this petition under Section 482 Cr.P.C stands settled in favour of the petitioners as the inherent powers of this Court cannot be curtailed by the availability of an alternative remedy in the form of a revision under Section 397 Cr.P.C, in so far as the challenge to the summoning order is concerned [See *Dhariwal Tobacco Products Ltd. and others V/s. State of Maharashtra and another* {(2009) 2 SCC 370}, *Prabhu Chawla V/s. State of Rajasthan and another* {(2016) 16 SCC 30} and *Vijay and another V/s. State of Maharashtra* {(2017) 13 SCC 317}].

The grounds on which the petitioners seek quashing of the subject complaint and the summoning order passed thereon are as follows :

(i) no offence is made out against the petitioners inasmuch as FIR No.40 dated 03.03.2008 was registered upon the complaint of the first petitioner against the second respondent and others in relation to the very same incident which is the subject matter of the complaint; a *challan* was presented in relation to FIR No.40 dated 03.03.2008 against the second respondent and others in Criminal Case No.493 of 20.10.2008, culminating in the final acquittal judgment dated 10.01.2012 and therefore, there could not be two trials in respect of the same incident; (ii) the second respondent's complaint lacked *bonafides* as he had backtracked after compromising the matter and after taking the benefit thereof, by securing the acquittal judgment dated 10.01.2012 in relation FIR No.40 dated 03.03.2008; and (iii) the second petitioner is a resident of Chandigarh, as is borne out by his passport, and the learned Magistrate ought to have inquired into the matter or caused an investigation in keeping with the mandate of Section 202 Cr.P.C. before issuing process, but the summoning order dated 19.03.2012 reflects that no such inquiry/investigation was undertaken.

During the course of arguments, an additional ground was urged on behalf of the petitioners that the second respondent-complainant lacked *bonafides* as he had not disclosed the fact that the Superintendent of Police, Patiala, had undertaken an investigation into the events which formed the basis of FIR No.40 dated 03.03.2008 and submitted Report dated 22.08.2008 to the Deputy Inspector General of Police, Patiala Range,

Patiala, with a finding that only a complaint case under Section 323 IPC was made out upon the statement/cross-case of the second respondent.

The parties are closely related - the second respondent is none other than the son-in-law of the first petitioner and the brother-in-law of the second petitioner. Hostility between these near relations is stated to be sourced in property disputes and the political rivalry between the second petitioner and the second respondent. They had contested against each other in the Assembly Elections in 2007. The second petitioner was the Congress party's candidate, while the second respondent was an independent candidate.

There is no dispute as to the occurrence of a scuffle on 03.03.2008 at Gaushala Road, Sunam, between the two groups. Upon the statement made by the first petitioner on that day at about 6.45 p.m., FIR No.40 dated 03.03.2008 was registered on the file of Police Station City Sunam, District Sangrur, under Sections 308, 452, 323, 342, 427, 506, 148 and 149 IPC. It is also an admitted fact that after the statement of the first petitioner was recorded, the police officials recorded the statement of the second respondent at the Civil Hospital, Sunam. The Station House Officer, Police Station City Sunam, thereupon recorded that his statement along with the MLR indicated offences under Sections 452, 323, 148 and 149 IPC. However, as a case had already been registered with regard to this incident, he stated that investigation would be conducted along with that case.

According to the second respondent, he was under the impression that the police would take appropriate action on his cross-case

but ultimately, a *challan* was filed on 20.11.2008 only against him and his wife in the FIR case. He claimed that though the police had assured him that they were conducting an inquiry and that a *challan* would also be filed against the other group, no steps were taken and he was finally informed that the police would not be taking any other action. It is at this stage that he filed the subject complaint. This is the reason offered by the second respondent for the delay in the filing of the subject complaint.

Though the petitioners would contend presently that no offence has been made out against them on the strength of the second respondent's complaint, the aforestated facts demonstrate that an incident did take place on 03.03.2008 and the second respondent also suffered simple injuries, as borne out by the Medico-Legal Report. In relation to the very same incident, the first petitioner got registered FIR No.40 dated 03.03.2008 against the second respondent and others but ultimately, it ended in the acquittal judgment dated 10.01.2012 in Criminal Case No.493 of 20.10.2008.

In relation to this judgment, two grounds of attack have been urged by the petitioners. Firstly, they contend that the said judgment was a result of the compromise between the parties and that the second respondent resiled therefrom and pursued the subject complaint by getting the summoning order dated 19.03.2012 issued to them. They assert that this amounts to misuse of the process of law, warranting the quashing of the subject complaint. Secondly, they contend that as one judgment has already crystallized in relation to the events that occurred on 03.03.2008, a second trial would not be permissible into the same.

Insofar as the alleged compromise is concerned, it may be noted there is no written deed of compromise whereby the petitioners can prove the factum of such compromise beyond doubt. Their claim of compromise is based on the newspaper reports dated 30.09.2011 and 01.10.2011, which stated to the effect that the brothers-in-law, viz., the second petitioner and the second respondent, had settled their differences. Further, though the petitioners claim that the acquittal judgment in Criminal Case No.493 of 20.10.2008 was the result of such compromise, the judgment itself does not indicate so. It merely reads to the effect that the prosecution witnesses, including the petitioners herein, failed to support the prosecution's version. In consequence, the learned Sub-Divisional Judicial Magistrate, Sunam, held that there was no evidence against the accused that they had caused injuries to the second petitioner herein on 03.03.2008 and therefore, the guilt of the accused was not proved by the prosecution.

In this regard, the second respondent produced copies of the depositions of both the petitioners in the aforestated Criminal Case No.493 of 20.10.2008. Significant to note, after being declared hostile, both of them specifically stated during cross-examination by the prosecution that it was wrong to state that a compromise was struck between them and the accused and that was why they were refusing to give their testimony.

Further, Mr. Puneet Sharma, learned counsel, would point out that even in the proceedings before the Civil Court, arising out of their property disputes, no mention was made of any compromise by and between the parties. Learned counsel would assert that the petitioners themselves

chose to project a compromise in the newspapers and allowed the acquittal judgment to be passed by turning hostile, due to the Assembly Elections on 30.01.2012, wherein the second petitioner was contesting, so as to garner political support. In any event, it is not open to the petitioners to bank upon this so-called compromise at this stage and claim that it had motivated them to turn hostile in Criminal Case No.493 dated 20.10.2008, when they stated on oath during the proceedings therein that there was no compromise and that was not the reason why they were refusing to give their testimony.

In effect, this Court finds no evidence worth the name of any compromise, much less proof of such compromise being the basis of the acquittal judgment dated 10.01.2012 in Criminal Case No.493 of 20.10.2008, whereby the petitioner can be accused of lack of *bonafides* in pursuing the subject complaint and getting the summoning order issued.

Apropos the issue of a second trial into the same events, case law has been cited by both sides. In ***Sudhir Vs. State of Madhya Pradesh [(2001) 2 SCC 688]***, the Supreme Court observed that it is a salutary practice, when two criminal cases relate to the same incident, that they should be tried and disposed by the same Court by pronouncing judgments on the same day. Reference was made to the earlier judgment in ***Nathi Lal and others Vs. State of U.P. and another [1990 Supp. SCC 145]***, wherein it was observed that a fair procedure to adopt in a matter where there are cross-cases is that the same Judge should try both cases, one after the other, i.e., after recording of evidence in one case is completed, the Judge must hear arguments and reserve judgment and thereafter, he must proceed to

take up the cross-case, record all evidence, hear arguments and reserve judgment. It was further held that the same Judge must thereafter dispose of both matters by two separate judgments, but each case must be decided on the basis of the evidence placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. The Supreme Court cautioned that both the judgments must be pronounced by the same Judge one after the other.

In the case on hand, though the police authorities had found that a complaint case under Section 323 IPC was made out after investigation, no steps were taken in that regard and a *challan* was filed only in relation to FIR No.40 dated 03.03.2008, ignoring the cross-case of the second respondent.

The 'Explanation' to Section 2 (d) Cr.P.C. indicates that a report made by a police officer in a case which, after investigation, disclosed the commission of a non-cognizable offence, is deemed to be a complaint. However, no such report seems to have been filed despite the finding of the Superintendent of Police, Patiala, in his Report dated 22.08.2008, that an offence under Section 323 IPC was made out upon the second respondent's cross-case. It was in these circumstances that he filed the subject complaint.

In any event, the second respondent cannot be said to have withheld information as to the registration of FIR No.40 dated 03.03.2008 inasmuch as he disclosed this fact in the subject complaint. It may also be noted that Criminal Case No.493 of 20.10.2008, arising out of FIR No.40 dated 03.03.2008, culminated in the acquittal judgment dated 10.01.2012 on

the ground that the prosecution had failed to prove the guilt of the accused owing to the witnesses turning hostile. Therefore, the said judgment did not turn upon the actual merits of the matter and no opinion was expressed, as such, on the events that formed the basis of the case. Thus, in effect, there is no possibility of any contradictory judgments being rendered in relation to the said incident. Be it noted that the second respondent cannot be penalized for the lapse of the police authorities in not putting up his cross-case along with the FIR case, despite the finding of the Superintendent of Police, Patiala. Therefore, in terms of the law laid down by the Supreme Court in *Nathi Lal* (*supra*), it would suffice at this stage if the same Court tries the subject complaint case, duly taking note of the judgment and record in Criminal Case No.493 of 20.10.2008. This Court therefore finds no merit in the contention that the subject complaint requires to be quashed on this ground.

It is the claim of the second petitioner that he is a resident of Chandigarh, i.e., he resides outside the area of jurisdiction of the learned Magistrate at Sunam. This is the basis for the contention that the mandatory procedure posited by Section 202 Cr.P.C. ought to have been followed and the learned Magistrate at Sunam should have inquired or caused an investigation to ascertain whether sufficient grounds were made out to proceed against the second petitioner. In consequence, the summoning order is attacked as being unsustainable, for want of such inquiry/investigation.

Section 202 Cr.P.C. deals with postponement of issue of process. Section 202 (1) Cr.P.C. reads thus:

'Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that

It may be noted that the words in brackets: 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' were inserted in this provision by Central Amendment Act No. 25 of 2005, with effect from. 23.06.2006.

In ***M/s Pepsi Foods Ltd. and another vs. Special Judicial Magistrate and others [(1998) 5 SCC 749]***, the Supreme Court held that summoning of an accused in a criminal case is a serious matter and that criminal law cannot be set in motion as a matter of course. The Supreme Court observed that it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have criminal law set in motion and that 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. The Court observed that he has to examine the nature of allegations made in the complaint and the evidence, both oral and documentary, in support thereof and would that be sufficient for the complainant to succeed in bringing the charge home to the accused. It was further observed that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning of the accused and he

has to carefully scrutinize the evidence brought on record and may even put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations and then examine if any offence is *prima facie* committed by all or any of the accused.

Notably, after amendment of Section 202 Cr.P.C., w.e.f. 23.06.2006, it is mandatory for the Magistrate concerned to conduct an inquiry or cause an investigation before issuing process if the accused resides beyond his area of jurisdiction. [See ***K.T. Joseph vs. State of Kerala and another***{(2009) 15 SCC 199} and ***Udai Shankar Awasthi vs. State of Uttar Pradesh and another*** {(2013) 2 SCC 435}].

In ***Sonu Gupta Vs. Deepak Gupta and others***, [(2015) 3 SCC 424], the Supreme Court observed that at the stage of cognizance and summoning of the accused, the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether a *prima facie* case has been made out for summoning the accused. It was pointed out that, at that stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because he must not undertake the exercise to find out, at such stage, whether the materials would lead to conviction or not.

It may however be noted that the second petitioner admittedly owns a house at Sunam. His political base is Sunam. He contested and continues to contest elections from Sunam and is a registered voter there. Merely because he also owns a house at Chandigarh would not mean that he

resides beyond the area of jurisdiction of the learned Magistrate at Sunam, for the purposes of Section 202 Cr.P.C. Be it noted that the Statement of Objects and Reasons of Amendment Act No.25 of 2005 makes it clear that the objective of making an inquiry/investigation mandatory in the case of an accused who resides beyond the area of jurisdiction of the Magistrate concerned was to see that frivolous complaints were not filed against such persons who reside far away, so as to cause inconvenience to them. That would not be the situation in the case of an accused who has a residence within the area of jurisdiction of the Magistrate and also has another residence elsewhere. When it is the admitted case of the second petitioner that his political base is Sunam and that he owns a residence there in his name, it is not open to him to claim that he resides beyond the area in which the learned Magistrate at Sunam exercised jurisdiction and that an inquiry under Section 202 Cr.P.C. should have been undertaken compulsorily. This self-serving statement of the second petitioner needs mention only to be rejected.

That being said, it may be noted that in terms of the law laid down in *M/s Pepsi Foods Ltd. (supra)*, a summons cannot be issued in a criminal case for the mere asking. Even if the mandatory procedure under Section 202 Cr.P.C., applicable to an accused residing beyond the area of jurisdiction of the Magistrate, does not come into play, it is within the discretion of the Magistrate to undertake an inquiry of such nature even in relation to an accused who resides within the area of his jurisdiction. All that is required even then is that the Magistrate should examine, *prima*

facie, as to whether grounds are made out for him to proceed in the matter and thereafter issue summons to the accused [See ***S.K. Bhowmik vs. S.K. Arora and another, {2007 (4) RCR (Criminal) 650}***].

In the case on hand, the summoning order dated 19.03.2012 demonstrates that the learned Magistrate at Sunam noted the contents of the second respondent's complaint and his preliminary evidence as CW-1, wherein he reiterated the version put forth by him in the complaint. The learned Magistrate noted that this version stood corroborated by CW-2, the Personal Assistant of the second respondent. The learned Magistrate also noted the contents of the statement made by Dr. Darshan Singh, CW-3, the Medical Officer at the Civil Hospital, Sunam, who had examined the second respondent and who vouched for the Medico-Legal Report (Ex.C1). The learned Magistrate found that this evidence was sufficient to prove, *prima facie*, that the accused in the complaint case had acted in furtherance of their common objective on 03.03.2008. The learned Magistrate however noted that the injuries suffered by the second respondent were not life endangering and accordingly omitted Section 307 IPC while issuing summons in relation to the other offences punishable under Sections 452, 323, 148 r/w 149 IPC. It is therefore clear from a plain reading of the summoning order that the learned Magistrate applied his mind and took an informed decision as to how to proceed in the matter. Failure in considering the FIR, which already stood foreclosed by the acquittal judgment dated 10.01.2012, was therefore of no consequence. In effect, issuing of process by the learned Magistrate cannot be said to be erroneous or irregular in any manner.

The petitioners' further contention is that the subject complaint is liable to be quashed as the second respondent did not disclose therein that an inquiry had been undertaken into the incident by the Superintendent of Police, Patiala, resulting in the Report dated 22.08.2008. It may however be noted that there is no evidence of the said report having been furnished to the second respondent prior to the filing of the subject complaint on 08.01.2009. It is stated that the said report was filed along with the *challan* on 20.11.2008 in Criminal Case No.493 of 22.11.2008 but again, there is no evidence produced of when the *challan* dated 20.11.2008 and the enclosures annexed therewith were served upon the second respondent. In the absence of such evidence, this Court cannot assume on the strength of surmises and conjecture that the second respondent was aware of the Report dated 22.08.2008 by the time he filed the subject complaint on 08.01.2009.

Reliance was placed on ***Kuldeep Raj Mahajan Vs. Hukam Chand, (2008) (1) RCR (Criminal) 370***, wherein a learned Judge of this Court held that issuance of a summoning order without considering an investigation report/cancellation report of the police was unsustainable as the complainant, despite knowledge, had concealed the said report from the learned Magistrate. This was held to be an indicator of the *malafides* on the part of the complainant. This judgment is of no avail to the petitioners as no material is produced to even infer that the second respondent was aware of the Report dated 22.08.2008 and that he willfully suppressed it.

Significantly, the finding in the said report was to the effect that an offence under Section 323 IPC was made out on the second respondent's

cross-case. This finding would have supported him in maintaining the subject complaint and there is no logical reason as to why he would have suppressed the said report, had he been aware of the same. Therefore, this contention also fails.

Before parting with the case, it may be noted that the second respondent filed **CRM-25926-2014** under Section 340 Cr.P.C. to initiate an inquiry against the petitioners for offences under Section 195 IPC. The basis for this application was the petitioners' projection of a compromise before this Court, so as to secure an interim order on the ground that the second respondent lacked *bonafides* in pursuing the complaint despite such compromise. The other ground urged in support of this application was that the petitioners had willfully withheld certain *zimni* orders, while extracting a series of *zimini* orders in their petition. Specifically, the second respondent pointed out that *zimini* orders dated 21.08.2009 and 23.10.2009 had been suppressed by the petitioners, so as to give an impression to this Court that no preliminary evidence had been led by him in the complaint case till the passing of the acquittal judgment on 10.01.2012.

Significantly, in the *zimini* order passed on 21.08.2009, the learned Magistrate had noted that two CWs were present and had been examined and adjourned the matter for the remaining preliminary evidence to 23.10.2009. The *zimini* order dated 23.10.2009 records that the matter was adjourned by the Duty Magistrate as the Presiding Officer was on leave.

Perusal of the petition reflects that the petitioners reproduced the *zimini* order dated 08.06.2009, which indicated that the matter was

adjourned to 21.08.2009 but the next order that they reproduced thereafter was the *zimini* order passed on 03.03.2010. However, as recording of the preliminary evidence in the complaint case was not the only ground taken into consideration by this Court at the time of the initial hearing, this Court is not inclined to take a serious view of the failure on the part of the petitioners in reproducing all the *zimini* orders. The application filed by the second respondent to initiate proceedings under Section 340 Cr.P.C. is accordingly rejected.

On the above analysis, this Court finds that the petitioners failed to substantiate any valid grounds to quash the subject complaint or the summoning order dated 19.03.2012 passed thereon.

The petition is therefore held to be devoid of merit and is accordingly dismissed.

Interim order dated 05.07.2013 shall stand vacated.

Pending miscellaneous applications shall also stand dismissed.

(SANJAY KUMAR)
JUDGE

December 08, 2020.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.