

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH.**

**CRM-M-12443-2019**

**Date of decision : 29.03.2022**

SATISH KUMAR

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SANT PARKASH**

Argued by : Mr. R.S.Mamli, Advocate  
for the petitioner.

Mr. Amreek Singh Narwal, DAG, Haryana

Mr. Sanjay Verma, Advocate  
for the complainant/respondents No. 2 and 3.

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**SANT PARKASH, J.**

Petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure for quashing/setting aside the impugned order dated 16.08.2017 passed by learned Sub Divisional Judicial Magistrate, Sohana Gurugram whereby the accused/petitioner has been summoned to face trial for the commission of offences punishable under Sections 427 and 506 of the IPC and the order dated 15.02.2019 passed by learned Additional Sessions Judge, Gurugram whereby the revision petition preferred against the afore said order dated 16.08.2017 has been dismissed.

Brief facts of the case are that civil suit was filed by accused Satish (petitioner), Devender and Ajay regarding the property in question, admitting that a case of partition is pending at Tehsil Office, Sohna and the property was joint in nature. The petitioner

misrepresented before the Court as the property was already partitioned way back in the year 2003. The accused persons were successful in getting an ex-parte judgment dated 16.09.2011 as per which accused No. 2-Devender was directed that he should not effect any construction over the property till it was partitioned. It has been further alleged that accused Satish and Devender are cousin brothers and Satish had impleaded Devender as a defendant on account of their collusion, to cause wrongful loss to other parties. Devender did not appear before the Court purposely so that he would be proceeded against ex-parte.

When complainant/respondents No. 2 and 3 were effecting construction over their land which was already partitioned then accused persons moved a false complaint to the police by producing ex-parte order and got the construction work stopped. Proceedings under Section 107/151 were drawn against the complainant party on the basis of complaint moved by the accused/petitioner. While the complainant/respondents were in police custody, accused persons/petitioner demolished the wall of the complainant party in collusion with the police. On 17.11.2015, accused persons instituted complaint against the complainant party before learned SDM, Gurugram (South). Learned SDM vide order dated 12.01.2016 dismissed the said complaint by observing that the property in question was partitioned and the mutation pertaining to the partition had been sanctioned. No appeal was pending with regard to the same before any Court of Law and the accused were not able to produce any evidence in this regard which revealed that the partition was final.

Respondents No. 2 and 3 had filed criminal complaint

under Sections 192, 193, 427, 506 and 120-B of the IPC against the accused persons/ present petitioner on the allegations that the accused persons have demolished the wall of the complainant party out of mischief and have threatened them of dire consequences in case they tried to report the matter to the appropriate authority.

The accused persons are property dealers, have misrepresented to the Civil Court and in collusion with each other have secured an ex-parte order which resulted in tremendous loss to the complainant party.

Learned Court below vide order dated 16.08.2017 had observed that the court has been prima-facie made to believe that the accused party demolished the wall of the complainant party out of mischief and threatened them and accordingly summoned the accused persons to face trial for offences under Section 427 and 506 IPC. Feeling aggrieved, the accused persons filed Criminal Revision challenging the summoning order which was also dismissed vide order dated 15.02.2019 passed by learned Additional Sessions Judge, Gurugram.

Being not satisfied with the aforesaid orders, the petitioner has filed the present petition for setting aside the orders passed by the Courts below.

The petition has been opposed by learned State Counsel. However no reply has been filed on behalf of the respondent/State.

The petition has also been opposed by learned Counsel for the complainant/respondents No. 2 and 3 in terms of reply which is already on the case file.

Learned Counsel for the petitioner has submitted that the allegations against the petitioner are false, frivolous and baseless. The respondents have not produced any witnesses to the occurrence that the petitioner has damaged the wall of the respondents. The respondents want to encroach upon the land of the petitioners and have developed/constructed illegal colony on the said land. Even the Municipal Committee, Sohana has initiated action for demolishing the illegal construction. There was no demolition by the petitioner and if there was any that was done by the authorities. The complaint against the petitioner has been made with male fide intention and there is no threat to the respondents nor any offence is made out against the present petitioner. The learned Court below while summoning the petitioner has not perused the evidence on record and summoned the petitioner illegally and unlawfully. The orders passed by the learned Courts below are based on conjectures and surmises and the same are liable to be set aside.

On the other hand learned Counsel for the complainant/respondents No. 2 and 3 has submitted that the petitioner/accused had misrepresented the Court below and secured ex-party judgment dated 16.09.2011 vide which direction was issued to the defendant No. 2 not to effect any construction over the property till it was partitioned whereas the partition of the said land had already been effected between the parties. The learned SDM, Gurgaon (South) in his order observed that partition regard the suit land has already been effected, there is no pendency of any kind in this regard over the suit land. Even mutation pertaining to the land in question has already been

sanctioned and no appeal is pending regarding the land in question before any Court of Law.

The learned Court below has rightly observed that prima-facie case is made out against the accused party for demolishing the wall of the complainant party out of mischief and has summoned the accused/petitioners to face trial under Sections 427/506 IPC. The impugned orders passed by the Courts below do not suffer from any illegality and the present petition may be dismissed.

Hon'ble Supreme Court in case titled '**M/s Pepsi Foods Limited Vs. Special Judicial Magistrate**', 1998-1 CJ 49 as relied upon by learned Counsel for the petitioner, has held as under :-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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 and would that 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 recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

Co-ordinate Bench of this Court in case titled as **Gurdeep Kaur Vs. Balbir Singh and others**, 2005(2) RCR (Criminal) P & H 205 has held that the learned trial Magistrate has to be, prima facie, satisfied as to whether there are sufficient grounds for proceeding

against the accused named in the complaint or not. It is not the duty of trial Magistrate to enter into detailed discussion on the merits or demerits of the case.

From the judicial precedents referred above, this fact is not disputed that in a summoning order, a Magistrate is not required to pass a speaking order. At the stage of summoning, the Magistrate has only to evaluate the material placed before him from the prima-facie view and not from the point of view for conviction or acquittal of the accused.

In the present complaint before the learned trial Magistrate, the complainant examined themselves as PW-1 and PW-2 and placed on record certain documents in support of their claim. The learned trial Magistrate after considering the allegations made in the complaint and evaluating the material placed on record, held that prima facie case has been made out for summoning the accused persons.

Further, in the revision preferred by the accused/petitioner against the aforesaid order, learned Appellate Court has observed that the scope of revisionary Court is very limited. The revisional jurisdiction can be exercised in case of glaring defect in procedure or manifest error on a point of law resulting into miscarriage of justice. The Court has no jurisdiction to go into the whole evidence and interfere with the findings. The Judicial Magistrate has the discretionary power to summon a person to face trial in a private complaint and the revisionary court has merely to see that the discretion has been exercised judiciously. The Court believes that the discretion has been exercised judiciously.

In case **Bhushan Kumar and another Vs. State (NCT of**

**Delhi) and another 2012(2) RCR (Criminal) 794, Hon'ble Supreme**

Court has held as under :-

“ Once the Magistrate has exercised his discretion, it is not for the High Court or even Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved would ultimately end in conviction of the accused.”

Glancing through the impugned order dated 16.08.2017, it

is seen that the learned Sub Divisional Judicial Magistrate, Sohna gave his specific findings that the court has prima-facie made to believe that the accused party demolished the wall of the complainant party out of mischief and threatened them and the accused are accordingly liable to face trial under Sections 427 and 506 of the IPC.

From the judicial precedent as referred above, no interference is required in the impugned order as the Magistrate has exercised his discretion and it is not for this Court to substitute its own discretion. The Courts are supposed to interfere only when there exist legal lacunas in the order under challenge and may be when findings under challenge are not supported by evidence.

In view of the discussion above, I do not find any illegality and infirmities in the orders passed by the Courts below.

The petition being devoid of any merit is dismissed accordingly.

**29.03.2022**  
kavneet singh

**(SANT PARKASH)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No