

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

**CRM-M-35390 of 2018
Date of Decision:- 12.12.2022**

Jitender

....Petitioner

Vs.

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Rahul Jaswal, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

KARAMJIT SINGH, J.(Oral)

The present petition has been filed by the petitioner praying for quashing of impugned criminal complaint No.189/2017 dated 21.11.2017 (Annexure P-4) bearing CNR No.HRS003-007514-2017, titled State through Raj Singh Ahlmad Vs. Jitender under Section 195 IPC and the impugned summoning order dated 15.03.2018, Annexure P-5, passed by the Court of learned Chief Judicial Magistrate, Sonapat and all the consequential proceedings arising therefrom.

On notice of motion reply was filed by way of affidavit of Harinder Kumar, Deputy Supdt. Of Police, Sonapat on behalf of respondent No.1-State.

The counsel for the petitioner has submitted that petitioner Jitender appeared as a prosecution witness in criminal case

titled State Vs. Statish and others, FIR No.222 dated 3.8.2015 under Section 148, 149, 302 IPC, Police Station Kundli (Sonepat) and in the said criminal case the accused persons were acquitted while giving them a benefit of doubt by the Court of learned Additional Sessions Judge, Sonapat. Thereafter, the said Court without following the provisions of Section 340 CrPC lodged criminal complaint (Annexure P-4) through Raj Singh Ahlmad against the petitioner under Section 195 IPC. The counsel for the petitioner further submits that before filing the impugned complaint, the Court of Additional Sessions Judge, Sonapat failed to conduct any inquiry and did not satisfy itself that it is expedient in the interest of justice to lodge any such complaint against the petitioner. Thus, the complaint, Annexure P-4, and all the consequent proceedings including the summoning order, Annexure P-5, deserve to be set aside. In support of his arguments, the counsel for the petitioner referred to the judgment passed in ***BK Uppal Vs. State of Punjab reported in 2015 (1) RCR (CrL) 338.***

The present petition is opposed by the State counsel who has submitted that the petitioner deposed falsely in criminal case having FIR No.222 dated 3.8.2015 under Section 148, 149, 302 IPC, Police Station Kundli (Sonepat) which resulted in acquittal of the accused persons and thereby the petitioner committed perjury and accordingly, criminal complaint as per the provisions of Section 195 Cr.P.C was filed by the court concerned through its Ahlmad.

I have considered the submission made by counsel for the parties.

Section 340 of CrPC reads as follows:-

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary:-

- a) Record a finding to that effect;*
- b) make a complaint thereof in writing;*
- c) send it to a Magistrate of the first class having jurisdiction;*
- d) take sufficient security for the appearance of the accused before such magistrate, or if the alleged offence is non-bailable and the Court think its necessary so to do, send the accused in custody to such Magistrate; and*
- e) bind over any person to appear and give evidence before such Magistrate.*

(2) *The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such*

complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) *A complaint made under this section shall be signed,-*

(a) *where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;*

(b) *in any other case, by the presiding officer of the Court.*

(4) *In this section, " Court" has the same meaning as in section 195."*

Admittedly, the petitioner appeared in the witness box as prosecution witness in criminal case titled State Vs Satish and others, having FIR No.222 dated 3.8.2015 under Section 148, 149, 302 IPC, Police Station Kundli (Sonapat) and on conclusion of trial the accused persons were acquitted by the Court of Additional Sessions Judge, Sonapat vide judgment dated 24.10.2017, Annexure P-1. Thereafter, the said Court lodged complaint, Annexure P-4, through its Ahlmad against the petitioner under Section 195 IPC alleging that the petitioner made false deposition in criminal case having FIR No.222 dated 3.8.2015 under Sections 148, 149, 302 IPC, Police Station Kundli (Sonapat) which resulted in acquittal of the accused persons. It has come on record that before lodging the complaint, Annexure P-4, the court concerned had not formed opinion and did not satisfy itself that it was expedient in the interest of justice that an inquiry should be made into the subject matter. Further, no inquiry was conducted in the present case before ordering filing of complaint

against the petitioner as per the mandate laid down under Section 340 CrPC. It appears that the court concerned filed the complaint Annexure P-4 on the premise of presumption and the fact that the petitioner retracted from his previous statement recorded by the police, while appearing in the witness box and was declared hostile during the course of trial.

Merely by ordering institution of a complaint against the petitioner without conducting an inquiry as contemplated under Section 340 CrPC, does not meet and satisfy the requirement of the provisions of the said section. This Court is of the view that the impugned complaint is not maintainable as the same was filed in violation of the mandatory provision of Section 340 Cr.P.C.

In the light of the above discussion, the impugned criminal complaint, Annexure P-4 and all the subsequent proceedings arising thereof deserve to be set aside.

Consequently, the present petition is allowed, and the impugned criminal complaint Annexure P-4, summoning order Annexure P-5, and all the consequential proceedings are hereby quashed against the petitioner.

12.12.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

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