

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

**CRM-M- No.21296 of 2022
Date of Decision:- 29.11.2022**

Subhash Ram

....Petitioner

Vs.

Atul Gupta

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Ram Mohinder Sharma, Advocate
for the petitioner.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner seeking quashing of the order dated 26.11.2021 (Annexure P-2) passed by Ld. Additional Sessions Judge, Sangrur in a criminal revision petition No.115 of 2018.

The brief facts of the case are that the petitioner/complainant filed criminal complaint against the respondent in the Court of Sub-Divisional Judicial Magistrate, Moonak, District Sangrur. After the completion of preliminary evidence the trial Court summoned the respondent under Sections 420 and 465 IPC vide order dated 3.2.2018, Annexure P-1. The said order was challenged by the respondent by way of revision before the Court of Ld. Additional

Sessions Judge, Sangrur and the said Court vide order dated 26.11.2021 (Annexure P-2) allowed the revision petition and the aforesaid summoning order, Annexure P-1, was set aside and the matter was remitted back to the trial Court to reconsider the same and to pass fresh order in accordance with law and accordingly, the complainant was directed put in appearance before the trial Court on a particular date.

The petitioner being aggrieved by the order dated 26.11.2021 (Annexure P-2), passed by the Court of Additional Sessions Judge, Sangrur has filed the present petition.

I have heard the counsel for the petitioner, who has supported the summoning order dated 3.2.2018, Annexure P-1.

I am of the view that there is no illegality or perversity in the impugned order, Annexure P-2, passed by the Court of Ld. Additional Sessions Judge, Sangrur. While passing the order Annexure P-2, the Revisional Court rightly observed that the trial Court has failed to discuss as to how prima facie the respondent/accused cheated the complainant. The Revisional Court further observed that the learned Trial Court has failed to apply its mind before exercising the power of taking cognizance.

The summoning order, Annexure P-1, dated 3.2.2018 passed by the learned Trial Court reads as follows:-

“Present:- Complainant with counsel Sh. B.S. Bhutal Adv.

Arguments on summoning of accused Atul Gupta and Khushpal Singh heard.

2. *It is the case of complainant that he is resident of Nawagaon, Tehsil Moonak. He purchased Mahindra Tractor 575 bearing registration No PB-64A-3016 on the basis of taking finance from Mahindra Finance Comp. Legally the registration was entered in his name but accused No. 1 took his tractor forcibly on 15.10.2010 and without his consent he sold it under value to his known person. The accused connived with each other dishonestly and prepared the documents of said tractor. Accused No. 1 told his name as Subash Chand(the name of complainant), he said that the RC of tractor has lost. He prepared his forged affidavit and declaration to this effect. Accused No. 2 was knowing that all of it was false. Complainant has further submitted that he never came to the Court Complex Moonak for execution of any such documents. Both these accused connived with each other and prepared false documents. They did so in order to cause wrongful loss to the complainant and obtain wrongful gain for themselves. On 23.04.2013 accused No. 1 came to the Court complex Moonak and complainant prayed him to return his tractor but he abused him and abused his caste in the presence of general public at Moonak. He abused his caste and stated that “Salye Chamar Tu Mera Ki Bigad Sakda Hai”, “ Mai Jo Karna Se Kar Leya”, “Chemya Tu Jithe Takarna Hai Takar Lai, Meri Uppar Tak Pahuch Hai, Meri Agge Teri Okat Hi Ki Hai Ki Tu Meri To Tractor Vapis Mange”. Thereafter, the complainant moved application to the police officers but nothing was done, so he has moved this complaint before the Court.*

3. Court directed him to bring his evidence and he examined CW1 Subash Ram, CW2 Gurjant Singh, , CW3 HC Manjeet Singh, CW4 Sawaran Singh, CW5 Satgur Singh, PW6 Tarun Kumar, PW7 examined.

4. After considering the evidence brought on file by the complainant, this Court has come to the conclusion that though the complainant has adduced his evidence that the both accused tried to cause him wrongful loss and obtain wrongful gain to themselves but he was not mentioned their caste. In order to summon any accused under the SC/ST Act, it is must for the complainant to show the caste of accused and it should fulfil the requirement that the accused does not belong to the caste of complainant for which he has been abused by him/them. Therefore, no ground is made out to summon them under SC/ST Act. However, prima facie case is made out to summon them for committing the offences punishable under Sections 420 and 465 IPC. Let, they be summoned for 12.03.2018.

Date: 03.02.2018

Sd/-

Next Date:12.3.2018

PCS, SDJM, Moonak”

From the perusal of the same, it is clear that in all the petitioner examined seven witnesses in support of his case but even the summary of said evidence has not been discussed by the Trial Court while passing the summoning order, Annexure P-1. The law requires that the order of 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 as has been held by the *Hon'ble Supreme Court in M/s Pepsi Foods Limited Vs. Special Judicial Magistrate & Ors. AIR 1998 SC 128*. Further in *GHCL Employees Stock Option Trust Vs. India Infoline Limited (2013) 4 SCC 505*, the Hon'ble Supreme Court has held that summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course.

In the light of said settled position of law as discussed above although it is not required that the Magistrate should discuss in detail the evidence led by the complainant, but mere statement that the Magistrate had gone through the complaint, documents and heard the complainant, as reflected in the summoning order, Annexure P-1, will not sufficient to demonstrate application of judicial mind. Further the Magistrate cannot act in a mechanical manner while passing the summoning order.

In light of the above, this Court is of the view that the impugned order, Annexure P-2, is passed by Ld. Additional Sessions Judge, Sangrur in accordance with law and there is no illegality in the same and thus, no ground is made out for interference of this Court under Section 482 Cr.P.C.

Consequently, the present petition is hereby dismissed being devoid of merits. The petitioner is directed to appear before the 1d. Trial Court on the date already fixed in the trial. Further, the Trial Court is to decide the matter afresh in light of above settled position in law and order dated 26.11.2021, Annexure P-2, passed by the learned Additional Sessions Judge, Sangrur.

29.11.2022*P. Chawla***(KARAMJIT SINGH)
JUDGE**

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No