

**IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

CRM-M No. 19841 of 2019

Date of decision : August 31, 2022

Dal Chand

..... Petitioners

Versus

Rajender and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Ms. Shaveta Sanghi, Advocate
for the petitioner.

Pankaj Jain, J (oral).

The petitioner herein filed a complaint against the respondent for the offences punishable under Sections 193, 500, 506 and 120-B IPC. The said complaint was dismissed by the Judicial Magistrate Ist Class, Palwal at the time of the summoning of the accused. The said order of dismissal of the complaint was taken in revision by the petitioner before the Sessions Judge, Palwal. The revision also stands dismissed vide order dated 16.02.2019 (Annexure P-4) upholding the order dated 5.1.2018 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Palwal.

The petitioner is before this Court invoking jurisdiction under Section 482 Cr.P.C against the aforesaid orders passed by the Courts below. As per the complaint it was alleged that the respondents taking advantage of the brother of the petitioner procured a false and fictitious sale deed dated 15.06.2006 for a land measuring 29 kanals 13 marlas executed by his brother for a petty sale consideration of Rs.16,66,000/-. After execution of the said sale deed Jagbir disappeared. The petitioner filed a criminal complaint against the accused persons on 16.07.2007. As a counter blast to

the said complaint filed by the petitioner, the respondent-accused filed a criminal complaint against him on 07.08.2007 levelling false and frivolous allegations against him and his family members with an intent to defame them. He blames that on account of such false and baseless allegations his image and reputation has been tarnished and thus, the respondents being guilty of having committed offences punishable under Sections 193, 500, 506 and 120-B IPC be proceeded against and summoned to case trial.

The Trial court after examining the evidence adduced by the petitioner at pre-summoning stage found that:-

“In the present case, apart from the apprehensions and assertions, the complainant has not placed on record any material in order to make out a prima-facie case against the accused person for their summoning under the sections as mentioned in the complaint. From the perusal of the entire material on record, no case of Defamation and extending threats is prima facie made out against the accused persons.

Keeping in view the facts and circumstances of the present case, this Court is of the considered and confirmed view that there is nothing on record which corroborates the claim of the complainant. The material produced before this Court at this stage does not in any way calls for the summoning of the accused persons under Sections 193, 500, 506 read with Section 120-B IPC.

*Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. As per the case law titled as **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate, 1997 (4) RCR Page 761**, in which it was held by Hon'ble Supreme Court that:-*

“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 that would be sufficient for the complainant to succeed in bringing home the charge against the accused. It is not that the Magistrate is silent spectator at the time of recording of preliminary evidence before summoning of accused. Magistrate has to carefully scrutinize 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.”

Taking into consideration the aforesaid facts and circumstances, I do not find any sufficient ground to summon the accused persons as prayed for.”

In revision it has been held that no irregularity or infirmity could be found in the impugned order dated 05.01.2018 (Annexure P-2) passed by the trial court. Thus, the revision petition deserves to be dismissed.

Learned counsel for the petitioner while referring to the two orders submits that the revisional court has not applied its mind and infact has just reproduced the order passed by the trial court, thus, it will be a case wherein this Court must exercise jurisdiction under Section 482 Cr.P.C., even though second revision is prohibited under Section 397(3) Cr.P.C.

I have heard learned counsel for the petitioner and have

carefully gone through the records of the case.

It is settled proposition of law that at the time of summoning the trial court is not required to pass a mechanical order but must apply its mind. The court is required to examine the nature of allegations made in the complaint and the evidence brought on record. Admittedly, in the present case whole set of allegations levelled against the respondents relate to criminal complaint dated 7.8.2007 filed by respondents. It has been claimed by the petitioner that false and frivolous allegations levelled in that complaint caused swear dent to the reputation of the petitioner and his family and thereby the respondents are guilty of having committed offence punishable under Section 500 IPC. The trial court found that a complaint filed by the respondents against the petitioner has been dismissed by the court of competent jurisdiction vide order dated 24.01.2013 not for falsity of the allegations but the petitioner and his sons have been extended the benefit of doubt. The trial court further noted that the evidence brought on record was discrepant and the same was not enough to hold accused guilty of the offence punishable under Section 500 IPC. The trial court further found that the complaint does not disclose the ingredients to constitute offences punishable under Sections 193, 506 read with Section 120-B IPC.

Learned counsel for the petitioner has not been able to show as to how the findings recorded by the trial court are perverse or suffer from any illegality or perversity. She has not been able to point out any evidence brought on record by the petitioner but not considered by the trial court. The parameters with respect to exercise of jurisdiction under Section 482 Cr. P.C already stand settled. This Court will be justified in interfering in

the order only when it is shown that the same has caused miscarriage of justice.

In view of the fact that no infirmity could be found with the orders passed by the courts below, this Court does not find it to be a fit case to call for interference while exercising jurisdiction under Section 482 Cr.P.C.

Consequently, the present petition is dismissed.

(PANKAJ JAIN)
JUDGE

August 31, 2022
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Whether speaking/reasoned Yes
Whether Reportable No