

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39331-2014

Date of decision : 19.05.2022

H.R.Janni

....Petitioner

Vs.

Sukhbir Singh Goyat

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. V.K.Jindal, Sr. Advocate with
Mr. Gopal Soni, Advocate for the petitioner.

Mr. Sunil Saharan, Advocate for
Mr. Jitender Dhanda, Advocate for the respondent.

MANOJ BAJAJ, J.

Petitioner has approached this Court under Section 482 Cr.P.C seeking quashing of complaint bearing No.1082-2013 as well as summoning order dated 16.10.2014 (Annexure P-1), whereby he was summoned to face prosecution for alleged commission of offences punishable under Sections 499 and 500 Indian Penal Code, 1860.

At the very outset, learned Senior counsel contends that he does not press his prayer for quashing of complaint, but confines his relief only to the limited extent of challenging the correctness and validity of the impugned summoning order dated 16.10.2014 (Annexure P-1).

Heard the learned counsel for the parties.

A perusal of the impugned summoning order dated 16.10.2014 reveals that the Magistrate while issuing process against the accused (petitioner) has observed that at the stage of summoning, Magistrate is not to

consider, if the offence has been made out against the accused or what defences are open to him after issue of process. The trial Court while issuing the process against the accused has not at all even referred to the report under Section 202 Cr.P.C sent by the concerned police station. Apparently, the impugned order has been passed in a cryptic manner without applying judicial mind, thus the same is not sustainable as the Court has not examined the material including the pre-summoning evidence to *prima facie* form an opinion that the offence(s) alleged by the complainant are made out against the accused.

At this stage, it will be useful to refer the judgment passed by the Hon'ble Supreme Court in “***S.W. Palanitkar Vs. State of Bihar***”, ***reported in 2001 (4) R.C.R. (Criminal) 572***. The relevant observations are extracted below:-

“23.Many a times, complaints are filed under Section 200 Cr.P.C. by the parties with an oblique motive or for collateral purposes to harass, to wreck vengeance, pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract touching commercial transactions instead of approaching civil courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no action could be taken against them on criminal side. A wrongful or illegal act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that necessary ingredients of constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act constituting an offence but not to proceed against the accused in a criminal prosecution. Hence before issuing a process a Magistrate has to essentially keep in mind the

scheme contained in the provisions of Sections 200-203 of Cr.P.C. keeping in mind the position of law stated above and pass an order judiciously and not mechanically or in routine manner.”

In view of the above background of this case, the impugned order dated 16.10.2014 (Annexure P-1) is set aside and the case is remanded back before the Magistrate for deciding afresh after taking into consideration the entire material on record, in accordance with law.

Disposed off.

(MANOJ BAJAJ)
JUDGE

19.05.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No