

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

CRM-M-45754-2016

Date of decision : 09.05.2022

Geja Singh and others

...Petitioners

Vs.

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. M.S.Basra, Advocate for the petitioners.
Mr. Dhruv Dayal, Sr.DAG., Punjab.
Mr. Vipin Mahajan, Advocate for respondent No.2.

MANOJ BAJAJ, J.

Petitioners are accused, who have approached this Court under Section 482 Cr.P.C. for quashing of summoning order dated 20.11.2015 (Annexure P-3) passed by Judicial Magistrate First Class-Gurdaspur, in a complaint case titled as “Yunas Masih Vs. Geja Singh and others” as well as the order dated 07.12.2016 (Annexure P-4) passed by revisional Court, whereby order dated 20.11.2015 was upheld.

The facts in brief leading to the petition are that complainant-Yunas Masih (respondent No.2) brought a criminal complaint bearing No.402 dated 14.12.2009 against the accused persons, wherein it was alleged that the complainant is having litigation with Geja Singh (accused No.1) in Civil court as well as Revenue Court and he has been maintaining distance from him as well as from other accused persons, who always speak wrongly to the complainant. On 06.12.2009, the accused persons used abusive language against him and threatened that they will take over the entire land of the

complainant and when he came out of his house along with his family members, the accused persons gave him thrashing. According to the complaint, the clothes of the complainant were torn and accused snatched his wrist watch and an amount of Rs.1,720/-. The complainant raised alarm and upon hearing the same, Gurmit Masih, Gulshan Masih, Sushan, Toshi and other persons arrived at the spot and complainant was rescued from the accused persons. On these broad allegations complainant sought prosecution of accused persons for alleged commission of offences punishable under Sections 323, 452, 380, 511 read with Section 34 IPC.

In support of his complaint, complainant adduced pre-summoning evidence by examining himself as CW-1, Gurmit Masih as CW-2 and Gulshan Masih as CW-3, respectively and also adduced the documentary evidence i.e. his caste certificate as Exhibit C-2. Upon considering the allegations in the complaint as well as the evidence on record, Judicial Magistrate First Class, Gurdaspur vide order dated 09.10.2010 proceeded to summon the accused persons only for the offences punishable under Sections 500 and 34 IPC.

Aggrieved against the said order, petitioners preferred the criminal revision bearing No.45 dated 18.07.2012 and after hearing the learned counsel for the parties, the revisional Court vide its order dated 07.08.2015 accepted the revision and while setting aside the summoning order dated 09.10.2010, remanded the case back to the Court of Judicial Magistrate First Class, Gurdaspur with a direction to re-consider the preliminary evidence and pass a fresh order. After receiving the case on remand, Judicial Magistrate First Class, Gurdaspur again analysed the evidence on record and vide order dated

20.11.2015 summoned the accused persons for the alleged commission of offences punishable under Sections 323, 452, 380, 511 read with Section 34 IPC and further it was specifically observed that no case for alleged commission of offence punishable under Sections 3, 4 and 5 Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was made out.

Again petitioners preferred criminal revision No.01 dated 05.01.2016 to challenge the order dated 20.11.2015 and the same was dismissed vide decision dated 07.12.2016 (Annexure P-4). Hence this petition.

On 19.01.2017, this Court issued notice to the respondents and pursuant to the said order, respondent No.2 filed his reply dated 22.11.2017.

Learned counsel for the petitioners has argued that the trial Court has passed the summoning order dated 20.11.2015 in terms of directions issued by the revisional Court on 07.08.2015 and proceeded to summon the accused persons only for the offences punishable under Sections 323, 452, 380, 511 read with Section 34 IPC. According to him, the revisional Court while accepting the revision of the petitioners had exceeded its jurisdiction by giving the said directions to the trial Court to re-examine the pre summoning evidence and in support of his argument, he has relied upon the judgment passed by the Hon'ble Supreme Court in "**Gurdev Singh Vs. Surinder Singh and others**", **(2015) 3 SCC 773**. He has further argued that upon remand of the case by the revisional Court, it was mandatory for the Magistrate to hold further inquiry in terms of Section 398 Code of Criminal Procedure, but the said exercise was not done and as the order dated 20.11.2015 is bad in law, therefore, the interference by this Court is called for.

Learned counsel for the complainant while opposing the prayer has argued that the allegations in the complaint contain the necessary ingredients to constitute the offences and the trial Court has considered the material on record and upon discussing the same, it has passed the summoning order against the petitioners. He has further argued that the revisional Court has specifically observed that the summoning order passed by the trial Court does not suffer from any illegality, therefore, it has rightly refused to interfere with the said decision. Mr. Mahajan, learned counsel for respondent No.2 has argued that since the remedy of revision has already been availed by the petitioners, therefore, present petition filed by them amounts to second revision in the garb of Section 482 Cr.P.C. He prays for dismissal of the petition.

After hearing learned counsel for the parties and considering the background of this case, this Court finds that the grievance of petitioners in relation to the order dated 07.08.2015 (Annexure P-2) is misplaced, as the said order was challenged by the petitioners through CRM-M-32707-2015, but later the petition was withdrawn by them on 28.09.2015 in order to raise the issues at an appropriate stage. The copy of the order dated 28.09.2015 has been produced by learned counsel during the course of hearing. Once the order dated 07.08.2015 passed by revisional Court was accepted by the petitioners, they cannot question the validity of the said order after its implementation. Apart from it, through the order dated 07.08.2015, learned Magistrate had summoned the accused persons for alleged commission of offence punishable under Section 500 IPC, but neither the subject complaint nor the evidence on record suggested the alleged commission of said offence, therefore, the trial Court

had wrongly carved out a new case by summoning the accused persons for alleged commission of offence punishable under Section 500 IPC by ignoring the case of the complainant. Thus at that stage, the revisional Court had rightly interfered with the summoning order dated 07.08.2015 and since the said order did not contain any discussion about the allegations made by the complainant, the revisional Court justifiably remanded the case before the trial Court. Further, the order dated 20.11.2015 (Annexure P-3) has been passed after re-considering the material on record as well as the pre-summoning evidence and perusal of the same reveals that the Magistrate has carefully considered the statement of complainant's witnesses before recording the satisfaction that *prima facie* case is made out for summoning the accused persons for alleged commission of offence punishable under IPC only, as the ingredients to constitute the offence punishable under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 were found to be missing.

The other argument addressed by the learned counsel that upon remand, it was mandatory for the Magistrate to hold further inquiry in view of Section 398 Cr.P.C is also without any force as the said provision enables the High Court or the Court of Sessions to order such an inquiry in case, it is so required, but admittedly, in the present case, the revisional court while remanding the case had not issued any such directions. The reliance placed upon the decision of the Hon'ble Supreme Court is also of no help to the case of the petitioners as in the said case, the revisional court had not heard the accused persons while reversing the dismissal of the complaint and the issue of applicability of Section 398 Cr.P.C was not gone into by the apex Court. In the

present case, the revision was preferred by the accused persons, therefore, the citation relied upon by learned counsel is not applicable to the facts and circumstances of the case.

Besides, a perusal of the impugned order passed by Additional Sessions Judge, Gurdaspur shows that the revisional Court has considered the arguments on behalf of the petitioners and rightly held that the impugned summoning order dated 20.11.2015 does not suffer from any illegality or impropriety.

Resultantly, finding no merit in this petition, this Court is not inclined to exercise the inherent powers under Section 482 Cr.P.C.

Dismissed.

09.05.2022		(MANOJ BAJAJ)
vanita	Whether speaking/reasoned :	JUDGE
	Whether Reportable :	Yes No
		Yes No