

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

228

CRM-M-9816-2016 (O&M)

Reserved on: 25/03/2022

Pronounced on: 30/05/2022

PANKAJ KUMAR

...Petitioner

Versus

STATE OF PUNJAB AND ANR

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by : Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG Punjab.

Mr. Sanjiv Kumar Aggarwal, Advocate with
Mr. Ojas Bansal & Tejas Bansal, Advocates
for respondent No.2.

VINOD S. BHARDWAJ. J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') for seeking quashing of complaint No.25 dated 13.11.2010 (Annexure P-5) filed by respondent No.2 under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') titled as 'Varinder Jindal Versus Pankaj Kumar' along with the summoning order dated 08.09.2012 (Annexure P-6); the order framing charge dated 19.10.2015 (Annexure P-7) as well as the charge-sheet dated 19.10.2016 (Annexure P-8) in Sessions Case No.52 dated 31.08.2015 and all other consequential proceedings arising therefrom.

2. Briefly the facts of the case leading to the filing of the instant petition arise from the death of Umesh Kumar. A complaint was submitted to the police by Om Parkash son of Jiva Ram (uncle of the deceased Umesh Kumar) stating

that Umesh Kumar-deceased was his nephew being son of his brother Dhuni Chand and used to run a shop of medicines with his father at Mour Mandi. Pankaj Kumar (petitioner-herein), who runs a Pharmacy shop under the name and style Pankaj Pharmacy at Bhatti Road, Bathinda had close business ties with him. Om Parkash claims to have received a phone call from his friend Pal informing about his nephew going missing after falling into a canal. Upon receipt of the said news, he left for Mour Mandi and reached home. It was then informed that Pankaj Kumar (petitioner-herein) had also come to the house of Umesh Kumar along with one another person and had brought his lunch box with him. All three of them had food and tea together at home. Thereafter, Pankaj and his nephew Umesh left together and the third boy left on foot without informing. That Pankaj Kumar again came to the house at about 12:15 P.M. and had informed the family that Umesh Kumar had fallen into canal where he had gone to wash his hands and that despite efforts made by him, he was unable to pull him out. Pankaj Kumar stayed at the house for about 15 minutes and then left. The complainant along with other members of the family went to the canal but his nephew Umesh Kumar was not found. Telephone calls made to Pankaj Kumar went answered and the phone was thereafter switched off. Upon continued search, the dead body of Umesh Kumar was traced near village Mari in the canal. Body was pulled out from the canal to ascertain about his death where the doctors declared him dead. Allegation was levelled that Pankaj Kumar was responsible for death of Umesh Kumar. Resultantly, case bearing FIR No.100 dated 18.08.2010 was registered at Police Station Maur District Bathinda under Section 302 IPC.

3. It is submitted that after thorough investigation of the case, the investigating agency prepared a cancellation report dated 07.10.2010 with a

specific finding that Umesh Kumar had slipped into the canal while washing hands after urination when he slipped and he had died on account of drowning. Cancellation report was thereafter submitted in the Court of Judicial Magistrate First Class, Talwandi Sabo and a notice was thereafter served upon the complainant/paternal uncle of the deceased and after affording opportunity to the parties, the said cancellation report was accepted by Judicial Magistrate First Class, Talwandi Sabo vide order dated 28.10.2010. Statement of the complainant-Om Parkash was also recorded wherein he expressed satisfaction with the investigation conducted by the investigating agency and submission of the cancellation report thereafter.

4. Respondent No.2-brother-in-law of the deceased Umesh Kumar thereafter instituted the impugned instant complaint against the petitioner on 13.11.2010, which was registered as criminal complaint No.25 under Section 302 of the IPC. In pre-summoning evidence, three doctors were examined, who brought on record the post mortem report, chemical examiner's report and the report of histopathological examination. Thana Singh PHG was examined as CW-4 to prove registration of the FIR and widow of Umesh Kumar was examined as CW-5. One Bhushan Kumar was also examined as CW-6 before whom it was claimed that an extra judicial confession was made by the petitioner on 20.10.2010. Besides, the father-in-law of the deceased appeared as CW-7 and complainant-respondent No.2 appeared as CW-8. Upon consideration of the preliminary evidence, the petitioner was summoned to face trial vide order dated 08.09.2012 appended as Annexure P-6. The case was thereafter committed to the Court of Sessions for trial and an order framing charge was passed against the petitioner on 19.10.2015 (Annexure P-7) and the formal charge was framed on

19.10.2015 (Annexure P-8). The instant petition has been filed challenging the said proceedings.

5. Response to the petition was duly furnished by respondent No.2-complainant as well. The factual aspect as noticed above was however not disputed, but, it was contended that the proceedings are not maintainable and the petition deserves to be dismissed as the power under Section 482 CrPC can be ordered only when the allegations contained in the complaint do not disclose any cognizable offence. As there is last seen evidence of the deceased; coupled with extra judicial confession of the petitioner; injuries on the person of the deceased; subsequent conduct of the petitioner as well as the motive on his part, the link in the chain of events/circumstances leading to the death of Umesh Kumar and indicating towards the involvement of petitioner-Pankaj Kumar is complete. Hence, the petition under Section 482 CrPC deserves to be dismissed.

6. Learned counsel appearing on behalf of the petitioner has argued that order of summoning has been passed in a mechanical manner and without making any reference to the cancellation report that had been submitted by the police in favour of the petitioner. It is submitted that the allegations in question had been thoroughly examined by the police and a definite conclusion had been recorded that Umesh Kumar had died as a result of slipping into the canal while washing his hands . The Magistrate was bound to consider the cancellation report that had been duly accepted by the Court of competent jurisdiction. It was incumbent on the Magistrate to first call for a report from the police, on receipt of the complaint, under Section 202 CrPC before issuing the process. He has further argued that even from the perusal of the summoning order, there is no reference of any evidence against the petitioner and the same is passed only on a report

pertaining to the death of Umesh Kumar. As a matter of fact, perusal of the post-mortem report, chemical examiner's report and the report of histopathological examination conclusively establishes the death to have occurred on account of drowning and the only circumstance relied upon by the respondent No.2-complainant is an extra judicial confession allegedly made before CW-6/Bhushan Kumar, which is immaterial, as the extra judicial confession was made on 28.10.2010, i.e. after the police had already submitted a cancellation report. There was thus firstly no reason for the petitioner to have made any extra judicial confession before CW-6/Bhushan Kumar especially when the cancellation report had already been filed. Besides, once the extra judicial confession had been made before the said witness on 28.10.2010, there is no reason why the said fact was not agitated before the JMIC on 28.10.2010 or no attempt was made prior thereto when the cancellation report was pending acceptance before the JMIC. The conduct of the respondent No.2 also does not inspire confidence and it is not a natural reaction of the respondent No.2 to stay quiet, despite such a crucial fact having come to their notice.

7. He has further argued that perusal of the following documents shows that the FIR in relation to the death of Umesh Kumar citing the petitioner-Pankaj Kumar as a suspect was investigated by the Police. Cancellation report under Section 173 CrPC was submitted after the conclusion of the investigation. The relevant extract of the same is as under:-

I conducted the investigation after reaching at the spot, inspected the spot and prepared visual site plan. Body of the aforesaid Umesh Kumar was examined and inquest report was prepared in form 25.35 as per rules. After giving an application to the SMO, Talwandi Sabo, Post Mortem examination of the dead body was got conducted. Statements of

the witnesses were recorded after reaching at the spot. Preliminary investigation of this case was conducted by SI/SHO. Investigation was attested by DSP Mor, S. Gumeet Singh and it was found in the investigation that the death of Umesh Kumar is caused, after answering nature's call, when he went near the canal to wash his hands and got slipped into it as bank of canal was slippery and stream of water was also high due to rain on the said day because of which he drowned. In this incident Pankaj Kumar has no fault at all. DSP requested SSP to submit cancellation report after preparing the same in the above which, upon receiving in Police Station in above said case, cancellation report in presented after completion for acceptance.

8. The Postmortem report of the deceased Umesh Kumar dated 19.08.2010 showed the following injuries:-

<i>Injury</i>	<i>1) Abrasion on left side of the head just above lateral and eye-brow 2.5 x 2 cm in size.</i>
<i>Disease of deformity</i>	
<i>Fracture</i>	<i>2) Reddish abrasion on right side of forehead above right eye brow 2 x 2 cm in size.</i>
<i>Dislocation</i>	<i>3) Lacerated wound on bridge of nose 1½ x 1 cm in size with clotted blood.</i>
	<i>4) Reddish abrasion 3 x½ cm on left parietal region of head 4 cm above pinna of left ear.</i>
	<i>5) Reddish abrasion on right hand dorsal 15 x 4 cm in size just anterior to wrist.</i>
	<i>6) Reddish abrasion 1 x 1 cm on left knee on the anterior aspect.</i>
	<i>7) Reddish contusion 10 x 3 cm on dorsal aspect of left fore arm 8 cm below the elbow.</i>

9. The report of the chemical examiner has also been appended as an

Annexure P-9 which concludes thus:-

“No Poison detected in the contents of exhibits I, II, III, IV & V.”

10. The Histopathological report has also been appended as Annexure P-10 and the same does not show any untoward accident or abnormality. Insofar as the injuries are concerned, out of the seven injuries noticed in the post mortem report, 5 of such injuries are abrasions on the knee, on the parietal region of the head, as well as near eyebrow, and there is contusion on the left forearm and one lacerated wound on the bridge of nose. A perusal of the cancellation report shows that the investigating agency concluded that the nature of the injuries sustained were indicative that the same were suffered on account of a slip into river and by hitting against the canal lines and due to fall as a result thereof. There was no motive for Pankaj Kumar (petitioner-herein) to indulge in commission of the offence as the deceased Umesh and Pankaj were good friends. Hence, cancellation report was submitted.

11. To the contrary, perusal of the complaint shows that the principal reliance of the complainant is on the extra-judicial confession claimed to have been made by Pankaj Kumar before CW-6/Bhushan Kumar and that the petitioner allegedly wants to compromise the matter with family of Kashmiri Lal (respondent No.2-complainant and in-laws of the deceased Umesh Kumar). As per the provisions contained in the Code of Criminal Procedure under Chapter XIV, once a complaint is submitted before the Magistrate, he may take cognizance of any offence. In the event the Magistrate decides to take cognizance, he has to follow the procedure under Chapter XV and that by virtue of Section 202 CrPC, where the accused is residing at a place beyond the area in which the Magistrate exercises the jurisdiction, he shall postpone the issue of process and either enquire

into it himself and direct the investigation to be made by police officer. Section 210 of CrPC shows that when a case is instituted otherwise than on a police report and it is made to appear to the Magistrate during the course of enquiry or trial that an investigation by the police has not progressed, the Magistrate is required to stay the proceedings of such enquiry and call for a report in the matter from the police officer conducting the investigation. It is also evident from a perusal of the complaint that a specific reference to the registration of the case was made in the petition and the FIR had also been appended thereto. The said averment is contained in Paragraph 3 of the said complaint. Furthermore, it is also evident in Paragraph 6 of the complaint, that status with respect to the investigation and submission of the cancellation report was also averred and that the said cancellation report had been accepted on 28.10.2010. The Magistrate also noticed the said fact as a part of narration of the complaint. The statutory scheme mandates the Magistrate to call for a report from the police officer when an investigation in relation to an offence has been initiated, however, it does not contemplate seeking a report when investigation has already been completed by the Police.

12. He also places reliance on the judgment of this Court in **Dr. Neera Garg Vs. State of Haryana & Anr** in CRM-M-63512 of 2005 decided on 10.01.2007 which examined the scope of Section 202 CrPC and also Section 210 CrPC. The relevant extract reads thus:-

I see substance in the submission made by counsel for the petitioners. The point of view raised by the counsel tends to seek support from the judgment in Anil Kumar Sah's case, Daleep Singh's case and K.A.S. Paramar's case (supra). The action of the Magistrate in not taking into consideration the relevant material submitted before him in the form of police investigation as a cancellation report was bound to receive

consideration under law and non consideration thereof has led to an abuse of the process of the Court and would call for interference in the Impugned order.

13. Furthermore, this Court in the matter of **Sumit Gupta & Ors Vs. State of Haryana & Another**, in CRM-M-6189 of 2013 decided on 24.05.2016 observed as under:-

The Magistrate has not passed any order as to whether he accepted the cancellation report or that he take cognizance of the offences after disagreeing with police report under Section 173 Cr.P.C.. Accused were ordered to be summoned by separately registering the protest petition-cum-complaint as criminal complaint No.231 of 2011. In this way, no order on the cancellation report was passed. Under Section 210 Cr.P.C. when an investigation in the criminal case is pending, the Magistrate is bound to take into consideration the report submitted by the police, while dealing with the complaint filed by the complainant. The impugned order (Annexure P5) does not show that the police report and the documents attached therewith were ever considered. It was simply on the basis of the complaint that the summoning order was passed. In this way, the impugned order (Annexure P5) dated 18.12.2012 otherwise suffers from illegality.

14. He has further placed reliance on the judgment of this Court in the matter of **Kuldip Raj Mahajan Vs. Hukam Chand 2008 (1) RCR (Criminal) 370** wherein, the summoning order had been passed by the Magistrate without considering the cancellation report by the police. The relevant extract of the said judgment relied upon by the petitioner are reproduced herein below:-

10. In the aforesaid context, learned counsel for the petitioner submitted that inspite of having called report from the Investigating Officer vide order dated 1.9.2000 (Annexure P-18), the learned Magistrate, while passing the impugned

summoning order dated 19.09.2002, did not take into consideration the cancellation/investigation report of the police. Perusal of the impugned summoning order (Annexure P-2) reveals that there is no reference at all to the investigation report/cancellation report of the police in the summoning order. Without considering the investigation report/cancellation report of the police, the impugned summoning order could not have been legally passed by the learned Magistrate. The respondent, despite knowledge, concealed the cancellation report of the police from the learned Magistrate. This is another indicator of mala fide on the part of the respondent.

15. Reference was also placed on the judgment of this Court in the matter of **Savera Sidhu Vs. Harleen Sidhu 2011(2) RCR (Criminal) 442.** The relevant paragraphs relied upon by the petitioner are extracted as under:-

“13. In the present case, admittedly, the factum of the investigation was in the knowledge of the Magistrate. Thus, on account of the fact that the investigation was pending in the FIR on the same facts much before even the evidence was recorded, it was incumbent to stay the proceedings and to await or call for the report of the police.’

(....)

34. As a sequel of above discussion, the present petitions are allowed and the impugned order dated 28.01.2009 passed by Judicial Magistrate Ist Class, Kapurthala, is set aside and the case is remanded back to the Magistrate to pass appropriate order after complying with the provisions to Sections 210 Criminal Procedure Code and 202(1) Criminal Procedure Code as expeditiously as possible”

16. A further reference was also made to the judgment in the matter of **Vipin Aggarwal Vs. State of Haryana 2015 (1) RCR (Criminal) 173,** to contend

that the power under Section 482 CrPC has to be exercised to prevent abuse of the process of law. Once the prosecution is established to be malicious and actuated by *mala fide*, the same cannot be allowed to be continued.

17. Learned counsel appearing on behalf of respondent No.2 has however contended that the order of summoning has been rightly passed by the Illaqa Magistrate after considering existence of *prima facie* case and thereafter, even a charge has been framed. The factum of injuries on the body of the deceased coupled with last seen evidence as well as the conduct of the petitioner and the extra judicial confession made by him before CW-6 Bhushan Kumar make out sufficient grounds to proceed against the petitioner. The submission of the cancellation report by the police does not deprive the respondent No.2-complainant of his right to institute a complaint. It is also contended that there has been an application of mind by the Court of Additional Sessions Judge and there are no circumstances that would justify quashing of proceedings emanating therefrom. It is further submitted that investigation is not within the domain of the complainant and a mere submission of the cancellation report by the investigating agency does not divest the respondent No.2-complainant of his right to institute a complaint under Section 190 CrPC and to take recourse to the remedy available to him in accordance with the law.

18. Learned counsel for respondent No.2 has further argued that the judgments relied upon by the counsel for the petitioner are not applicable to the facts of the instant case inasmuch as the Judicial Magistrate First Class had duly noticed the submissions and acceptance of the cancellation report. Thereafter, he had proceeded to consider the evidence led by the complainant and then directed the summoning of the petitioner. It is submitted that the provision of Section 210

CrPC require that when the case is instituted otherwise than on a police report and it is made to appear to the Magistrate that investigation by the police is in progress in relation to the offence which is subject matter of the enquiry, the Magistrate shall stay the proceedings or trial or call for a report in the matter from the police officer conducting the investigation. The requirement for calling of report under Section 210 CrPC accrues only when the investigation is pending and not in an event where the investigation already stands concluded and a final report has been filed. It is submitted that in the present case, a final report so filed had also been accepted by the Magistrate and as a result, there was no occasion for the Magistrate to comply with the provisions of Section 210 CrPC. It is argued that the entire evidence was duly noticed and it is not required at the stage of summoning for the Magistrate to record reasons for disagreeing with the cancellation report or to record a finding on the evidentiary value of such cancellation report, which already stands accepted. The fact that the said aspect is noticed in the order of summoning, it has to be assumed that the Magistrate had duly considered the said aspect. He further argues that the petitioner was summoned in the instant case vide order dated 08.09.2012 and that he had duly appeared before the Judicial Magistrate First Class. Thereafter, the case was committed and even a charge was framed against the accused on 19.10.2015. The petition before the High Court was filed in the month of March 2016 and that the first interim order directing the trial Court to adjourn the case beyond the date fixed before this Court was passed only in the month of August 2018. It is contended that a challenge to the order of summoning at this stage, after a lapse of more than 04 years having been passed, is highly belated and the petition deserves to be dismissed on the said score alone.

19. I have heard learned counsel for the parties and have gone through the pleadings as well as documents appended along with the case file and judgments relied upon by the counsel for the petitioner.

20. Chapter XXV of the Code of Criminal Procedure deals with complaints to a Magistrate. Section 202 thereof directs postponement of issuance of process in case a person is residing at any other place beyond the area in which the Magistrate exercises his jurisdiction and first enquires into the matter himself or directs an investigation to be made by the police officer or by other person he thinks fit to decide whether or not there are sufficient grounds for proceeding. The proviso to the said Section further stipulates that no such direction for investigation shall be made where it appears to the Magistrate that the offence complained of is triable exclusively by the Courts of Sessions. The present case falls in proviso A of Section 202(1) CrPC and as such, there was no occasion to direct any investigation to be conducted by the police officers and it was incumbent upon the Magistrate to inquire into the case himself. Resultantly, the statement of the witnesses and documents have been sought on record. Chapter XXVI of the Code of Criminal Procedure deals with commencement of proceedings before the Magistrate and Section 210 thereof contemplates procedure to be followed when there is a complaint case and police case in respect to the same offence. Even though the heading of Section 210 CrPC talks of the procedure to be followed where there is a police investigation, however, the language of the Section shows that the same is to be invoked when it is made to appear before the Magistrate that investigation by the police is in progress. Hence, the subsistence of an investigation must necessarily be shown before the power under Section 210 CrPC is to be exercised. Section 210(2) CrPC deals with the

situation when a report under Section 173 CrPC has been made by the police officer and that a cognizance on such a report is taken by the Magistrate, then the Magistrate shall enquire into or try the complaint case together as if both the cases were instituted on a police report. Section 210(3) contemplates a situation where the Magistrate does not take cognizance of any offence on the police report, then he shall proceed with the inquiry or trial in accordance with the provision of this Code. Thus, Section 210(3) CrPC would be the clause which would be more applicable to the facts of a case. In any case, the acceptance of a cancellation report in an FIR instituted on a complaint filed by the uncle of the deceased cannot be said to be a judgment under Section 353 CrPC. Section 354 CrPC contemplates language and content of the judgment and such aspect has also been incorporated in Volume 3 Chapter I Part H of the Punjab and Haryana Rules and Orders. The order accepting the cancellation report thus does not fall within the meaning of judgment. Resultantly, the issue cannot be said to be concluded upon mere acceptance of a cancellation report. It is open to the Court on a reading of Section 210(3) CrPC that an enquiry and trial on a complaint can be carried out by the Court. It is also apparent from a reading of the said provision that the Code of Criminal Procedure does not contemplate calling for a report from the Investigating Officer when an investigation has already been concluded. The relevant provision of Section 202 and 210 CrPC are reproduced hereinbelow:-

Section 202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or

by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.

Section 210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under

section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

21. There is thus no force in the arguments advanced by the learned counsel for the petitioner that the Court ought to have been called for a report from the Investigating Officer before issuing process.

22. Having held so, the same now leads to the next question which pertains to order of summoning and as to whether cancellation report has been considered by the Judicial Magistrate while issuing summons. It is evident from a perusal of the summoning order dated 08.09.2012 (Annexure P-6) that a specific reference was made to the acceptance of the cancellation report and thereafter the Judicial Magistrate noticed the evidence led by the complainant in support of his case before issuing process to the petitioner-accused. Once the said fact has been noticed by the Judicial Magistrate in the order of summoning, it is presumed to have been considered and not found favour. Recording any reasons with respect to the evidentiary value of such cancellation report or the deficiencies/discrepancies in the same would have been an act of reflecting on the merits of the said evidence, which the parties may rely upon in support of their case and as such it is not a requirement prescribed in law that the order of summoning must necessarily

reflect on the merits and demerits of the evidence brought before it. Certain parameters as have been prescribed before passing of an order of summoning are the only requirements to be seen by a Magistrate before issuing an order of summoning. It has been held by the Hon'ble Supreme Court in the matter of **Pollution Control Board Vs. M/s Mohan Meakins Ltd & Ors, 2000(2) RCR 421 SC** that there is no necessity of issuing a speaking order while summoning an accused. However, the mere absence of requirement to pass a speaking order does not absolve the Court from examining existence of *prima facie* evidence justifying summoning of an accused. Invariably, the fact that the matter has already been investigated into and a cancellation report having been accepted, the same would be a strong circumstance in favour of an accused, however, the same by itself cannot form a justification for rejecting a complaint at the threshold. It is well known that at the stage of consideration of a cancellation report especially when there is no protest petition, there is usually not much examination or scrutiny of evidence at the level of the Magistrate. Hence, there can be a situation where the prejudice caused to a real victim may go unnoticed. It is for the said reason that the institution of a private complaint is not barred under the statutory scheme despite acceptance of a cancellation report and that cancellation report is only one amongst various events that may be so relied upon by the defence in support of their case. It would however be incumbent upon the Court to exercise more caution in such cases while issuing summons or process to an accused to face trial.

23. The facts of the present case show that the complaint is based on an additional evidence in the form of an extra judicial confession claimed to have been made by the petitioner-accused admitting his guilt and praying for settlement to be made with the respondent No.2-complainant. At the stage of summoning, the

Court will not look into the probative value of the evidence although it would not wholly disregard the unimpeachable evidence and has to satisfy itself to the existence of the necessary ingredients of the offence and sufficient evidence to *prima facie* support the probability of the evidence on the strength of the material so adduced.

24. The order of summoning merely reflects at the evidence without discussing the same. Although ordinarily an order would require some reflection on the material taken into consideration by a Court while passing an order however, the same would not be an illegality that would vitiate the proceedings in terms of Section 461 CrPC. The same only leads to a prejudice and a semblance of loss that may have been occasioned to the petitioner. In the precedent judgments relied upon by the learned counsel for the petitioner, there was no reference to the cancellation report by the Magistrate, as a result whereof, the impugned order was set aside and the matter was remanded to the Court to pass a fresh order. However, the facts of the present case do reflect that the Magistrate so cognizant of the submission of the cancellation report and has thereafter noticed the evidence adduced before it prior to issuance of summons.

25. In addition thereto, there is yet another factor which weighs upon the Court, the same relates to delay on the part of the petitioner in raising a challenge to the order of summoning. Significantly, the petitioner had been summoned vide order dated 08.09.2012 and he did not prefer to raise a challenge to the said order. Thereafter, even charge against the petitioner was framed on 19.10.2015. The present petition raising a challenge to the order of summoning was thereafter filed in March 2016. Invariably, the filing of the present petition is highly belated and has been instituted after a cognizance of the offence has been taken by the Court

of Sessions and finding a *prima facie* case, charge had been framed. The stage of framing of charge cannot be permitted to lay foundation for the petitioner to impugn the initial order of summoning. Having accepted the said order and to have submitted himself to the process of law for nearly four years, the petitioner now at this stage cannot be permitted to raise a challenge to the order of summoning after such delay. It is also evident that the proceedings in the case had not been stayed by the Court despite filing of the petition in the year 2016 and it was only in the year 2018 that the trial Court was directed to adjourn the case beyond the date fixed. Thus, the trial had already commenced and as such, it would rather be counter-productive to the ends of justice to set aside the order of summoning and to direct the Court to reconsider the evidence and to pass a fresh order especially when a higher Court *viz.*, the Court of Sessions has also examined the evidence and has found existence of a *prima facie* case for framing of charge under Section 302 IPC and had commenced trial. This court would not go into the probative value of the evidence adduced before the Court as the same is for the trial Court to examine.

In view of the above, the instant petition is dismissed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

May 30, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>