

CRM-M-2736-2020

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-2736-2020 (O&M)
Date of Decision: 05.12.2023

VIPIN MAHAJAN

...Petitioner

versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Sahil Gupta, Advocate
for respondent No. 2

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of complaint bearing COMI No. 45/2016 dated 01.07.2016 titled as "*Mange Ram Vs. Vipin Mahajan*" (Annexure P-2) registered under Sections 156(3) Cr.P.C. pertaining to Police Station Sector-14, Panchkula and summoning order dated 06.12.2019 (Annexure P-5) whereby the petitioner has been summoned to face trial under Section 384 of IPC.

FACTUAL MATRIX

2. The brief facts of the case are that the petitioner made a written complaint on 12.03.2012 against respondent No. 2, who was posted as a Constable and was deployed at the Summons Cell, Chandigarh. On the basis of the complaint made by the petitioner, the veracity of his allegations was verified by Inspector Balbir Singh, who further directed the petitioner to

CRM-M-2736-2020

make a call from his mobile No. 76966-67335 to mobile No. 98781-19921 by switching the mobile to speaker mode. During the conversation, respondent No. 2 informed the petitioner that he would visit his shop but on being told that the petitioner will not be available there till 1.30 PM, he directed the petitioner to give the bribe money to his son and he would collect the same from him. The said conversation was recorded in Sony Digital Music Player-cum-Voice Recorder bearing No. 6204983. On the basis of the complaint made by the petitioner, which was substantiated by the recording, FIR No. RCCHG5012A0007 dated 12.03.2012 under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter 'PC Act') was lodged at Police Station CBI, Anti Crime Bureau, Chandigarh. Subsequently, a trap was laid and respondent No. 2 was caught red handed accepting the bribe from the petitioner.

3. Thereafter, respondent No. 2 filed a criminal complaint on 01.07.2016 (Annexure P-2) on the allegations that before recording of the testimony of the petitioner before the learned trial Court, in the aforementioned FIR, on 02.12.2013, the petitioner approached the respondent No. 2 and demanded Rs. 4,00,000/- for deposing in his favour. In these circumstances, on 09.12.2013, respondent No. 2 paid a sum of Rs. 50,000/- by withdrawing the same from his account in Axis Bank, Sector-10 Panchkula. This amount was collected by the employee of the petitioner namely Suresh Kumar who accompanied respondent No. 2 to the said bank in a car. The respondent No. 2 recorded the conversation and filed a complaint against the petitioner on 19.05.2014. The complaint was thoroughly investigated by the Panchkula Police and recommended for registration of the FIR vide its report Annexure P-2. The opinion of the

concerned District Attorney (Legal) was also obtained who also recommended registration of the FIR vide his report dated 11.02.2015 (Annexure P-3). Due to inaction of the Panchkula Police, respondent No. 2 was compelled to approach the jurisdictional Magistrate by filing an application under Section 156(3) of the Cr.P.C. for issuance of a direction to the police for registering a case against the petitioner.

4. Based on the report of the police under Section 202 of Cr.P.C, learned trial Court concluded that a *prima facie* offence under Section 384 of IPC is made out against the petitioner. Learned trial Court, after appreciating the facts and circumstances and the material available on record, summoned the petitioner on 06.12.2019 (Annexure P-5).

CONTENTIONS

5. Learned counsel for the petitioner *inter alia* contends that the respondent no. 2 was in fact convicted by the Special Judge, CBI Court vide judgment dated 29.07.2016 under the provisions of Sections 7 and 13(1)(d) of the PC Act and was ordered to undergo the following sentence:

Sr. No.	Offence under Sections	Imprisonment	Fine	In default of fine imprisonment
1.	7 of PC Act	Rigorous Imprisonment of three years	Rs. 10,000/-	Rigorous Imprisonment of six months
2.	13(1) (d) punishable under Section 13(2) of PC Act	Rigorous Imprisonment of three years	Rs. 10,000/-	Rigorous Imprisonment of Six months

The appeal against the conviction of respondent No. 2 is pending before this Court.

6. Learned counsel for the petitioner assails the impugned complaint (Annexure P-2) as well as the summoning order (Annexure P-5) on the ground that respondent No. 2 had taken the exact defence before the learned

Special Judge, CBI Court who, after appreciating the facts and circumstance of the case, dealt with his argument *in extenso* and rejected the same.

7. Learned counsel for the petitioner further assails the impugned summoning order and complaint on the ground of limitation as well as jurisdiction. The alleged occurrence had taken place on 02.12.2013, whereas the complaint was filed on 01.07.2016 and the petitioner was summoned on 16.12.2019, as such, the learned trial Court has taken cognizance after the period of limitation provided under Section 468 of Cr.P.C. The maximum sentence provided under Section 384 of Indian Penal Code is 03 years, therefore, the limitation for taking cognizance would be 03 years.

8. Learned counsel for the petitioner relies on the dismissal of the complaint filed by respondent No. 2 under Section 420, 467, 468, 471, 181, 182 of IPC by the learned Judicial Magistrate Ist Class, Chandigarh on 05.01.2023 to argue that the conduct of respondent No. 2 is apparent on the facts of the case and he has lodged vexatious and unwanted criminal prosecution against the petitioner in order to wreck vengeance out of spite. Further, he submits that the instant case is squarely covered by the law laid down by a two Judge bench of the Hon'ble Supreme Court in **State of Haryana and Ors. Vs. Ch. Bhajan Lal and Others 1992 AIR SC 604**, where, speaking through Justice Ratnavel Pandian, the following was held:

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

xxx xxx xxx

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

9. Per contra, learned counsel for respondent No. 2 submits that the ground for limitation is not available in view of ratio of law laid down by Constitutional Bench of the Hon'ble Supreme Court in **Sara Mathew Vs. Institute of Cardio Vascular Disease and Others 2014(14) RCR Criminal 10**, wherein it has been categorically held that for the purpose of commuting the period of limitation under Section 468 of Cr.P.C., the relevant date would be the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance or the date of issuance of process by the Court. Learned counsel for respondent No. 2 further contends that respondent No. 2 has been pursuing his remedy consistently, firstly by filing a complaint before the jurisdictional police officer, which was duly inquired into and registration of FIR was recommended against the petitioner. The opinion of the District Attorney, which is available on record with the reply as Annexure R-3, would indicate that the Investigating Agency had recommended registration of FIR under Section 384 of IPC against the petitioner. It was due to the inaction of the local police that the respondent No. 2 had not other option but to file the present petition before learned Judicial Magistrate Ist Class, Panchkula.

10. A reference is further made to the statement of the respondent No. 2 recorded by learned trial Court at the stage of pre-summoning evidence, which is available on record as Annexure R-4. A perusal of the deposition of respondent No. 2 would indicate that he has recorded the telephonic

CRM-M-2736-2020

conversation, duly proved as Ex. CW-1/3, in which the petitioner blackmailed respondent no.2 and demanded a sum of Rs. 50,000/- from him. The recorded conversation clearly indicates that the petitioner had demanded the money as bribe from respondent no. 2 and the same was received by an employee of the petitioner namely Suresh Kumar on 09.12.2013. Respondent no. 2 had withdrawn this amount on 09.12.2013, from his account in Axis Bank, Sector-10 Panchkula and the bribe in question was accepted in the jurisdiction of Panchkula.

OBSERVATION AND ANALYSIS

11. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the argument of limitation made by the petitioner is liable to be dismissed in view of the judgment of the Hon'ble Supreme Court in **Sara Mathew(*supra*)**. Further, the recorded conversation (Ex. CW-1/3) is admissible in terms of Section 65-A and 65-B of the Indian Evidence Act, 1872 and the relevance and veracity of the same can only be determined by the learned trial Court on the basis of evidence adduced by the parties.

12. This Court finds no force in the arguments advanced by the learned counsel for the petitioner as disputed facts cannot be determined by this Court on the basis of the probable defence taken by the petitioner in the present petition. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. This Court in exercise of its inherent powers under Section 482 Cr.P.C. is obligated to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law

as it would amount to give finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same.

13. A two Judge bench of the Hon’ble Supreme Court in **HMT Watches Limited vs M.A. Abida (2015) 11 SCC 776** has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended for determining the question of facts. It is only upto the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law.

CONCLUSION

14. However, the petitioner would be at liberty to raise all the pleas taken in the present petition before the learned trial Court at the appropriate stage during the course of the trial.

15. The present petition is dismissed.

16. Pending miscellaneous applications, if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)

05.12.2023
Ajay Goswami

JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No