

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-121-2018

Reserved on: 13.09.2023

Pronounced on: 15.09.2023

Pardeep Kumar

. . . . Petitioner

Vs.

Dr.Vipin and another

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr.Jasmer Singh Rozera, Advocate, for the petitioner.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., prayer is made by the petitioner to quash order dated 08.08.2017 (Annexure P6) passed by Id. Additional Sessions Judge, Palwal, whereby his revision petition was dismissed against the order dated 12.09.2016 (Annexure P4) by Id. JMIC, Hodal, dismissing the complaint filed by the petitioner against the respondents to prosecute them under Sections 147, 323, 389 & 506/34 IPC.

2. Perusal of the paper-book reveals that complaint (Annexure P3) was filed by the petitioner to prosecute the respondents by stating that he (petitioner) was posted as Pharmacist in Government Hospital, Hodal wherein the respondents are working as Doctors. It was alleged that accused had lodged a false and frivolous FIR bearing No.342 dated 01.07.2014 under Sections 147, 149, 186, 323, 332 & 353 IPC against him (petitioner) at Police Station, Hodal, though petitioner did not have any link with the allegations. It was alleged further that in fact the two accused/respondents

used to harass the petitioner and the entire staff in one way or the other. All the staff members were under tremendous pressure and almost all of them had levelled large scale allegations against the respondents-accused, but no action has been taken. It was further alleged in the complaint that on the date of occurrence, respondents had attacked him (complainant-petitioner) and had threatened to falsely implicate him with accusations of sexual assault and the whole incident was recorded in CCTV. Matter was reported to the police, but instead of taking action against the respondents, complainant was falsely implicated. Complainant-petitioner also referred about the various complaints made against the respondents by other staff members from time to time and prayed for summoning and prosecution of the accused.

3. After recording preliminary evidence, Id. JMIC, Hodal vide order dated 12.09.2016 (Annexure P4) dismissed the complaint. Revision filed by the petitioner against the said order was met with the same fate of dismissal vide order dated 08.08.2017 (Annexure P6) passed by Id. ASJ, Palwal. Against these orders, petitioner has approached this Court.

4. (i) It is contended by Id. counsel that at the stage of summoning, Court is required only to see the *prima facie* material and that evidence on record is not to be scrutinized in such manner as to whether the same would ultimately lead to conviction or not.

(ii) Ld. counsel has referred to a decision of Hon'ble Supreme Court rendered in *Shivjee Singh Vs. Nagendra Tiwary and others, 2010(3) RCR (Criminal) 466*, wherein it was held that where there are *prima facie* evidence, Magistrate is bound to issue process and even though the person

charged of an offence in the complaint might have a defence, the matter has to be left to be decided by an appropriate forum at an appropriate stage.

6. On the same proposition, reliance is also placed on a decision of this Court rendered in **CR-1669-2011** titled as ***Sher Singh Vs. State of Haryana and others***, decided on 10.10.2014.

7. I have considered submissions of ld. counsel for the petitioner and have appraised the record.

8. It is no doubt true that at the stage of summoning, Magistrate is required only to see *prima facie* evidence brought on record. At the same time, it is to be kept in mind that summoning an accused in a criminal case is a serious matter. Magistrate is required to apply its judicious mind in order to record his satisfaction that there is a *prima facie* case against the accused on the basis of allegations made in the complaint supported by the admissible material. Ld. trial Court as well as ld. revisional Court have rightly referred to ***GHCL, Employee Stock Option Trust Vs. India Infoline Ltd. (2013) 4 SCC 505*** and ***Pepsi Food Ltd. Vs. Special Chief Judicial Magistrate, 1998 SCC (Criminal)1400*** in this regard.

9. In the case of ***Pepsi Food Ltd.(Supra)***, it was held by Hon'ble Supreme Court as under: -

“Summoning of an accused in a criminal case is a serious matter, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning 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 the allegations made in the complaint and the evidence both oral and documentary in support thereof and would sufficient for the complainant to succeed in bringing charge to the accused.”

10. In the present case, as contended by ld. counsel for the petitioner, 5 witnesses were produced in the preliminary evidence. Copies of all five of them have been placed on record as Annexure P9 to P13. As rightly noticed by the Courts below that though CW1-complainant Pardeep Kumar deposed in support of the allegations made in the complaint, but his statement does not find corroboration from any other witness. CW2-Dr. Santosh (MO CHC Hodal) simply stated about her own complaint Ex.CW2/A and that accused used to harass and humiliate the remaining staff of the hospital. She did not depose anything regarding the alleged injuries or threat given to the complainant. CW3-Head Constable Manoj deposed about lodging of the FIR No.342 dated 01.07.2014 against the complainant. He has not stated anything regarding the allegations made in the complaint. CW4-Mukesh Kumar, Account Assistant in CHC Holder, also deposed against the complaints made against the accused, but did not tell anything about the alleged incident dated 01.07.2014 regarding causing of any injury or extending of any threat to the complainant by the accused. Same is the position regarding the statement of CW5-ASI Badan Singh, who stated about the complaints made against the accused about other people

11. It is relevant to mention that prior to approaching the Court, petitioner had moved complaint (Annexure P1) to SHO, Police Station, Hodal regarding the incident of 01.07.2014, wherein he had stated that accused Sushma Lata, rebuked him about the manners as he had not wished her and then she misbehaved with him and started abusing him and when he protested, both the accused started beating him and that he was saved from

their clutches by staff members of the hospital and patients present there and that the accused threatened to destroy his career and his job. It was also alleged that accused used to torture him mentally.

12. In the aforesaid complaint, there is no allegation that accused had threatened to accuse him for false accusation of sexual assault, which is so mentioned in complaint (Annexure P3). Not only this, there is no reference of any CCTV footage. Apart from the same, it was alleged that staff members of the hospital and patients present there had saved him. No names or details of any such staff members of the hospital or the patients are given in the complaint. In the complaint before the Id. Magistrate, no such staff member of the hospital or the patient has been examined. As per the own version of the complainant, FIR No.342 had been registered against him at the instance of the accused on 01.07.2014 itself, which was registered at Police Station, Hodal.

13. Having regard to all the aforesaid facts and circumstances and the legal position noticed earlier, this Court finds no illegality or irregularity in the impugned orders passed by the Courts below.

Dismissed.

(DEEPAK GUPTA)
JUDGE

15.09.2023

Vivek

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |