

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

**Neutral Citation No.: 2023:PHHC:076094
CRM-M-14077-2018 (O&M)
Date of Decision: 24.05.2023**

Sajjan and Others

.....Petitioners

Vs.

Tejpal and Another

.....Respondents

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Sandeep Verma, Advocate for the petitioners.

Mr. Nikhil Ghai, Advocate with Mr. Shubham Mangla,
Advocate for respondent No.1.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

Criminal complaint No.51/2016 (Annexure P-1) titled 'Tejpal Versus Sajjan and Others' was filed by respondent Tejpal to prosecute the four accused Sajjan and others (now petitioners) under Sections 452, 323 & 307 read with Section 34 of the IPC in the Court of Learned Judicial Magistrate 1st Class, Gurugram. After recording of the preliminary evidence, the petitioners vide order dated 02.12.2016 (Annexure P-2) were summoned to face trial. They challenged the summoning order dated 02.12.2016 by filing a revision but the same was dismissed by Learned Additional Sessions Judge, Gurugram vide order dated 19.03.2018 (Annexure P-3).

2. Aggrieved by the above said complaint and the orders Annexure P-2 and Annexure P-3, petitioners are now before this Court in the present petition under Section 482 Cr.P.C.

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3. It was alleged in the complaint Annexure P-1 that on 20.03.2015 the accused armed with lathi, criminally trespassed into complainant's 'Dilkhush Hotel' being run at the border of Village Panchgaon and Baghanki and brutally assaulted him, causing serious injuries on his head and other parts of his body with a view to kill him. In the state of giddiness and finding no alternative, the complainant-respondent fired in self defence of his person or property without specifically aiming at anybody resulting into one injury each to Rahul, Ram Lal and Hitesh (petitioner Nos.2, 3 & 4). The occurrence was also witnessed by one Vinod son of Om Parkash. It is further alleged in the complaint that though police reached the spot but wrongly arrested the complainant-respondent, kept him in illegal confinement for 4 days and on the basis of a concocted version given by the accused party, implicated him in case FIR No.179 dated 21.03.2015 registered at Police Station Manesar under Sections 307, 323 read with Section 34 of the IPC and Sections 27/54/59 of the Arms Act. It is also alleged that MLR of the complainant was got conducted by the police with great deliberations on 25.03.2015. Despite multiple bleeding and serious injuries, even the statement of complainant was not recorded by the police.

4. The above said allegations made in the complaint were supported in the preliminary evidence by the statement of complainant and eye-witness Vinod (PW-3). Dr. Mahender Verma was examined as PW-2, who proved the MLR Ex.PW-2/A; whereas PW-4 Constable Vijay proved FIR Ex.PW-4/A registered against the complainant at the instance of the accused-petitioners. After taking preliminary evidence, accused-

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petitioners were summoned and revision filed by them has been dismissed.

5. It is contended that complaint has been filed with a malafide intention to harass the petitioners and the same is abuse of process of law, as it is counter-blast of criminal case bearing FIR No.179 dated 21.03.2015 lodged by petitioner No.1 against the complainant. Though the occurrence took place on 20.03.2015 but complaint has been filed on 13.01.2016 with no explanation for delay. It is further contended that medical examination of the complainant-respondent was got conducted on 25.03.2015, which means that there was no injury dangerous to his life nor it required immediate medical attention. Complainant himself have admitted to have fired number of shots, causing injuries to the three of the petitioners. As it is alleged that complainant was in illegal confinement of police for 4 days, there is no version as to why his brother Rohtash, did not report the matter to the police or moved to the higher authorities. There was no injury on the person of the complainant to attract Section 307 IPC and that Courts below have fallen in error in passing the summoning order.

6. Opposing the petition, it is contended by counsel for the respondent-complainant that petitioners have already availed the remedy of filing a revision before the Sessions Court, which has since been dismissed and that though this Court can entertain the petition under Section 482 Cr.P.C. but the inherent power there-under is to be exercised sparingly so as to avoid needless multiple proceedings. It is further contended that once the Magistrate has exercised its discretion for

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summoning of the petitioners-accused on the basis of preliminary evidence produced before it, the higher Courts should not substitute its own discretion for that of the Magistrate. It is contended that in this case, as the respondent-complainant was in illegal confinement of the police, it was because of this reason that his medical was not immediately conducted despite multiple injuries. Otherwise also, the effect of delay in conducting of the medical examination or in filing of the complaint is to be considered at the stage of trial and cannot be reason to quash the complaint or the summoning order. Still further, it is urged that medical opinion is not sufficient to see applicability of Section 307 IPC, as it is the intention with which the injuries are caused, which are material so as to see that accused has the intention to kill or not. With these submissions prayer is made for dismissal of the petition.

7. Having considered submissions of both the sides, I find no merit in the petition.

8. In *Krishnan and Another Vs. Krishnaveni and Another (1997) 4 SCC 241*, it has been held by Hon'ble Supreme Court that after dismissal of the first revision by the Court of Sessions, the second revision before the High Court is barred under Section 397(3) Cr.P.C. However, the inherent power of the High Court is still available under Section 482 but such inherent power must be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. That power is to be exercised when there has been a failure of justice or misuse of judicial mechanism or procedure.

9. In *Prabhu Dutt Tiwari Versus State of Uttar Pradesh and*

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Others (2018) 13 SCC 609, it has been held by the Apex Court that at the stage of summoning accused on the basis of private complaint, all that is required is satisfaction of the Magistrate that there is sufficient ground to proceed against the accused in the light of record made available and evidence adduced by the complainant.

10. Besides, in ***Fiona Shrikhande Versus State of Maharashtra and Another (2013) 14 SCC 44***, it has been held by Hon'ble Supreme Court that once Magistrate by exercising his discretion forms opinion regarding existence of grounds for proceeding in a complaint and issues the process, the higher Court should not substitute its own discretion for that of the Magistrate. Elaborating, it was held by Hon'ble Supreme Court as under:-

*“11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under [Section 202](#) is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In ***Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736***, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question*

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purely from the point of view of the complaint, without at all adverting to any defence that the accused may have.”

11. By keeping in view the legal position as above, when the contentions of the two sides are considered, it is found that impugned summoning order Annexure P-2 has been passed by learned Magistrate after recording his satisfaction as to the sufficiency of material to summon the accused. The delay in getting the medical examination of complainant or delay in filing the complaint is to be considered by the Trial Court in the light of allegations made in the complaint, as at the stage of summoning, the Magistrate is concerned with the allegations as made out in the complaint as to whether these make out a prima facie case for summoning or not. The Magistrate in this case has exercised his discretion by passing order Annexure P-2, which has been upheld by the revisional court.

12. No doubt, in the medico legal report (Annexure P-9) pertaining to the respondent-complainant brought on record in the preliminary evidence, there is no mention that the injuries on the person of complainant were dangerous to his life, though there is mention of injury on the forehead; multiple healed soft tissue injuries at the scalp and blackening of both the eyes but there is clear allegation on the part of the complainant that he was assaulted by the accused-petitioners with intention to kill him. It is the intention of the assailants, which is material to attract Section 307 of the IPC and medical opinion in itself is not a sufficient criteria in order to see that Section 307 of the IPC is attracted or not. Similarly, it is for the Trial Court concerned to see as to whether the injuries on the person of the petitioners-accused were caused by the

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respondent-complainant or not. There is a version and cross-version, which is to be examined by the Trial Court during trial.

13. In view of the aforesaid discussion, it is held that it is not a fit case for this court to exercise its inherent powers under Section 482 Cr.P.C. to interfere in the impugned orders. Therefore, present petition is hereby dismissed.

May 24, 2023
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No