

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

202

CRM-M-13639-2017

Date of decision: 11.04.2023

Bhupinder Singh and others

.....Petitioners

Versus

Ajaib Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Karambir Singh Kahlon, Advocate
for the petitioners.

Mr. Ritesh Pandey, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioners have invoked the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing of Criminal Complaint bearing No.102/21.012014 titled as 'Ajaib Singh Vs. Bhupinder Singh and others' pending before the Court of learned Judicial Magistrate 1st Class, Batala (Annexure P/2) along with summoning order dated 08.10.2015 (Annexure P/8) passed by learned Judicial Magistrate 1st Class, Batala, order dated 12.02.2016 passed by learned Additional Sessions Judge, Gurdaspur (Annexure P/9) and order dated 02.11.2016 passed by learned Judicial Magistrate 1st Class, Batala (Annexure P/10).

2. Learned counsel for the petitioners *inter alia* contends that the Revisional Court while passing the impugned order (Annexure P/9) dated 12.02.2016 committed a grave illegality as the petitioners were not afforded an opportunity of being heard before passing the same, therefore, the entire proceedings stand vitiated and even the order dated 02.11.2016 (Annexure P/10) passed by the Trial Court deserves to be

set aside.

3. Learned counsel for the petitioners further contends that both the FIR No.98 dated 04.11.2013 (Annexure P/1) and the complaint pertain to the same occurrence and in the circumstances the Trial Court should have called for a police report as per the provisions of Section 210(1) of the Cr.P.C. which it did not and instead gravely erred in directly summoning the petitioners vide order dated 08.10.2015 (Annexure P/8).

4. It has also been submitted by learned counsel for the petitioners that even on merits a false and fabricated version has been brought forth in the complaint (Annexure P/2) as a counter-blast to the FIR (Annexure P/1) which was got registered by petitioner No.1 against the sons of the respondent. Learned counsel has thus urged that in the aforementioned facts and circumstances, the impugned orders deserve to be quashed.

5. Per contra, learned counsel appearing for the respondent while opposing the prayer and submissions made by the counsel opposite, contends that firstly the instant petition has been filed after a delay of more than one year from the date of order passed by learned Additional Sessions Judge (Annexure P/9), therefore, on grounds of inordinate delay itself it would not be open for the petitioners to impugn the said order.

6. Learned counsel for the respondent while drawing the attention of this Court to the FIR (Annexure P/1) as well as the complaint (Annexure P/2), submits that a bare perusal of the same clearly reveals that not only the place of occurrence in both the FIR and

the complaint are different but even the time of occurrence is not the same. Hence, the provisions of Section 210 of the Cr.P.C. would not be attracted in the case in hand. He still further contends that the preliminary evidence led by the complainant coupled with the medical evidence clearly shows that there were sufficient grounds for summoning the petitioners to face trial.

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. A perusal of the order dated 12.02.2016 (Annexure P/9) passed by learned Additional Sessions Judge indeed reveals that the petitioners were not heard before passing of the said order. Thus, the learned Additional Sessions Judge erred in denying the petitioners an opportunity of being heard in violation of well settled principles of *audi alteram partem*. However, at the same time it is a matter of record that the petitioners chose to keep mum for more than a year and did not challenge the said order. It is not the case of the petitioners and it cannot also be said that they were unaware about the pendency of the proceedings since they were initially summoned by the Trial Court to face trial under Sections 452 and 324 of the IPC. It is thus, evident that the petitioners were not diligent enough and had failed to approach this Court within a reasonable time, however, since there has been an apparent violation of the principles of natural justice, the matter deserves consideration despite the huge delay by the petitioners to challenge the aforesaid order passed by the learned Additional Sessions Judge dated 12.02.2016 (Annexure P/9).

9. It would be relevant to point out here that subsequent to

the order passed by learned Additional Sessions Judge, the Trial Court passed order dated 02.11.2016 (Annexure P/10) whereby the petitioners were summoned to face trial under Sections 307, 452, 324 read with Section 34 of the IPC and Section 25 of the Arms Act, 1959. At this stage if the order of Revisional Court is to be set aside on the ground of not providing an opportunity of being heard to the petitioners, the matter will have to be remanded back and a lot of time would be consumed in the judicial process as the entire process would have to be initiated again. Therefore, in the interest of justice and to save the precious time of the Courts below, since the matter pertains to the year 2017 and the relevant material is already available on record, it would be appropriate for this Court to decide as to whether or not there exist prima facie sufficient grounds to summon the petitioners to face trial under Sections 307, 452, 324 read with Section 34 of the IPC and Section 25 of the Arms Act, 1959.

10. It is settled principle of law that if on application of judicial mind to the averments made in the complaint and the material on record, the Magistrate is satisfied that there exist sufficient grounds for proceeding against the accused, he would be empowered to issue process under Section 204 of the Cr.P.C.

11. The Hon'ble Supreme Court in ***Sonu Gupta Vs. Deepak Gupta others : 2015(2) RCR (Criminal) 32*** has observed as under:-

“7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and

summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.”

12. In the instant case, in view of the statements of witnesses recorded in the preliminary evidence (Annexures P/4 to P/7) coupled with the medical record, this Court has no hesitation in observing that there indeed exist sufficient grounds for proceeding against the petitioners and thus the Trial Court was justified in summoning the petitioners to face trial under Sections 307, 452, 324 read with Section 34 of the IPC and Section 25 of the Arms Act, 1959. Still further, the authenticity or otherwise of the averments made in the complaint cannot be delved into at this stage as it would be a matter to be

appreciated by the Trial Court after the parties have led their respective evidence.

13. Coming to the contention of the learned counsel for the petitioners that the Trial Court erred in not calling for a police report in compliance of Section 210(1) of the Cr.P.C., this Court does not find any force in the same. The offences which are subject matter of enquiry or trial in the complaint case and the offences in the FIR are not the same and are distinct. Not only is the place of occurrence but even the accused in both the complaint and the FIR are different. In these circumstances, Section 210 of the Cr.P.C. would not be applicable in the present case.

14. Accordingly, the instant petition being devoid of any merit is dismissed.

11.04.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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