

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

CRM-M-16186-2018
Decided on : 13.09.2023

Vishwanath Sharma

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sandeep S. Majithia, Advocate
for the petitioner.

Mr. Pankaj Khullar, AAG, Punjab.

Mr. Neeraj Yadav, Advocate
for respondents No.2 & 3.

Manjari Nehru Kaul, J.(Oral)

The petitioner has invoked the extra-ordinary jurisdiction of this Court under Section 482 Cr.PC for setting aside the order dated 06.01.2018 (Annexure P-3) passed by learned Addl. Sessions Judge, Ludhiana in complaint No.1 of 2013 under Section 302 r/w 34 IPC whereby it upheld the order dated 07.11.2015 (Annexure P-4) passed by learned JMJC, Ludhiana discharging the respondents-accused at the stage of summoning.

2. The case in brief as set up by the complainant may be noticed as thus; On 25.06.2012, the petitioner-complainant (hereinafter referred to as 'complainant') received a phone call from respondent No.2 – Paramjit Kaur that his son Raman Kumar (hereinafter referred to as

‘deceased’) had died on account of chest pain. Upon examination at G.R.P. Hospital, Ludhiana, the deceased was declared brought dead. Subsequently, the complainant was informed by the police that his son had died. Thereafter, the complainant informed some of his relatives about the death of the deceased and they all reached Ludhiana. Inquest proceedings under Section 174 Cr.PC were conducted in the presence of the complainant and statement of respondent No.2-Paramjit Kaur, who was stated to be present with the deceased, at the time of his death, was recorded. Thereupon Rajvir Sharma, Pardeep Sharma and Sandeep Sharma, relatives of the complainant were told by the police that from the statement of Paramjit Kaur, it appeared to be a case of natural death. Since the death of the deceased had taken place at Railway Station, Ludhiana, Postmortem Examination was conducted upon the dead body. On 08.11.2012, the complainant along with his relatives visited Ludhiana to find out about the cause of death of the deceased. On receipt of Chemical Examiner’s Report, it came to their notice that presence of Choloro compound was detected in his Viscera. Based on the Chemical Examiner’s Report, the cause of death was then opined to be poisoning. Pursuant thereto, the complainant filed the complaint in question with a prayer to summon respondents No.2 and 3 under Section 302 r/w 34 IPC.

3. Learned Trial Court vide order dated 07.11.2015 on the basis of pre-charge evidence, dismissed the complaint in question against both the respondents-accused by holding that there was lack of sufficient

evidence to summon them to face trial under Section 302/34 IPC. The complainant, thereafter, impugned the order of discharge of respondents No.2 and 3, before the Revisional Court, which vide impugned order dated 06.01.2018 upheld the order passed by the Court below. Hence, the instant petition.

5. Learned counsel for the complainant has *inter alia* contended that the Court below had committed grave error while passing the impugned order by ignoring that there indeed was enough cogent evidence against both the respondents-accused of having committed an offence under Section 302/34 IPC. Learned counsel submits that during preliminary evidence, the complainant while appearing as CW-1 along with CW-2 Rattan Lal had not only supported the allegations made in the complaint but had also deposed to the effect that the deceased had been residing with the accused. ASI Harminder Pal Singh while stepping into the witness box as CW-3 had proved on record Ex.CW-3/1 copy of DDR, EX.CW-3/2 inquest report and Ex/CW-3/3 Chemical Examiner Report. Learned counsel has further submitted that once the cause of death of the deceased was on account of consumption of Choloro compound group of insecticides (poison) and not heart attack, it left no manner of doubt that it was a case of murder and not natural death. It has further been submitted that the material on record, including the inquest report, reflected that respondent No.2-Paramjit Kaur, was with the deceased before he died, which further proved that both the respondents-accused had travelled together with the deceased before he complained of chest

pain and died at Ludhiana. Still further, learned counsel has submitted that the respondent-accused had a definite motive to commit the crime in question as the deceased had been giving all his earnings to respondent No.2-Paramjit Kaur and the latter had become greedy as she wanted to swallow all his money. It is lastly argued that the Court below had gravely erred in exceeding its jurisdiction by discharging the respondents on the basis of the pre-charge evidence as at that stage only a *prima facie* case was to be seen for summoning the accused, which clearly stood made out from the allegations in the complaint as well as the material on record.

6. Per contra, learned counsel for the respondent has submitted that the allegations levelled against the respondents-accused in the complaint were totally baseless and had been rightly disbelieved by the Courts below. Learned counsel has further submitted that in the enquiry report dated 31.01.2013, conducted by DSP Hardeep Singh, GRP, Jalandhar, on the complaint filed by the complainant, statements of the complainant, CW-2 Rattan Singh, Maninder Singh (neighbour of the deceased) and Munish Kumar (co-tenant of the deceased) were recorded. In the statement of Maninder Singh, it had come to light that not only was the deceased in the habit of consuming intoxicants and medicines, but was residing along with Munish Kumar in a rented accommodation. It had further come to the fore that the deceased was getting a salary of Rs.5,000/- per month only, which he had been using to buy intoxicants, for his meals and also for his rent. Learned counsel has

vehemently argued that it was also a matter of record that a completely different stand had been taken by the complainant while filing the application for insurance claim of the deceased as he had stated therein that the deceased had died a natural death, thus, making it evident that the allegations levelled in the complaint were false and fabricated. Learned counsel has further submitted that there was not even any shred of evidence brought on record by the complainant to show that the deceased had been living along with the respondents-accused, in their house.

7. Heard learned counsel for the parties and perused the relevant material on record.

8. It must be borne in mind that the institution of criminal proceedings and issuance of summons to accused is a matter of significant gravity and cannot be set into motion mechanically and in a perfunctory manner. It is incumbent upon the court to demonstrate due application of judicial mind while summoning the accused, after taking into consideration the facts of the case and material brought on record. Trite to say that if the Magistrate after considering the statements on oath, if any, made by the complainant or of the witnesses is of the opinion, that there is lack of material to proceed against the accused, there is nothing, which should prevent him from dismissing the complaint. However, any such order must contain some reasons in support thereof.

9. Adverting to the case in hand, though the complainant as well as CW-2 Rattan Singh while stepping into the witness box reiterated the

allegations levelled in the complaint, however, it is not in dispute that neither of them had actually seen the deceased in the company of the respondent-accused No.2, before this death. Admittedly, as far as respondent-accused No.3 is concerned, there are no allegations that he was also travelling with the deceased on the fateful day. Even the relatives of the complainant namely Rajvir Sharma, Pardeep Sharma and Sandeep Sharma, who had gone to GRP, Ludhiana on learning about the death of the deceased, had not been examined by him to support his version.

10. Furthermore, as per the viscera report, some choloro compound substance was detected in the viscera of the deceased, which undisputedly has a very pungent smell. The deceased was admittedly a 32 year old man. It cannot be digested that a 32 year old man, who as per the postmortem report (hereinafter referred to as 'PMR') (Annexure P-2) was a "mid built and well nourished male" could have been administered any poison, much less choloro compound substance deceptively without he coming to know about it, on account of its pungent smell. Furthermore, in case, assuming for the sake of arguments, that the poison had been forced upon the deceased, it is highly improbable that he would have not put up any resistance. The PMR, however, reveals that no external injury much less any abrasion was found on any part of the body of the deceased. Hence, in the aforesaid facts, no evidence has been brought on record by the complainant to show that

deceased had been administered poison either by trickery or even by force.

11. 'Motive to commit the crime', in cases resting on circumstantial evidence, such as the case in hand, is of paramount importance. The motive to commit the crime in question, as per the complainant was that both the respondents-accused, with whom the deceased was living in their house, had gotten greedy and wanted to swallow the money of the deceased and thus, were averse to the deceased sharing his earnings with the complainant. However, no evidence much less cogent, was led by the complainant to show that the deceased was residing with the respondents-accused in their house. Rather, it had come in the inquiry report dated 31.01.2013, of the police that the deceased was living in a rented accommodation with one Munish Kumar and for which they both were paying a rent of Rs.1,850/- per month. Still further, during inquiry, according to Maninder Singh, who was living in the neighbourhood of the deceased, the latter was earning a paltry sum of just Rs.5,000/-, and was addicted to smoking and would consume liquor also. Furthermore, it also surfaced during inquiry that the deceased was already undergoing treatment at Civil Hospital, Rewari for chest pain. Thus, there is no hesitation in the mind of this Court in holding that the complainant had failed to make out a *prima facie* case against the respondent-accused for commission of the offences alleged.

12. The contention of the learned counsel for the petitioner that the Magistrate had gone beyond its jurisdiction and had minutely

discussed the evidence on record while passing the impugned order cannot be accepted. The evidence led in support of the complaint has to be scrutinized by a Court to arrive at a conclusion as to whether the essential ingredients of the offence(s) alleged are even made out or not. It would be apposite to refer to the decision of the Hon'ble Supreme Court in ***M/S. Pepsi Foods Ltd. & Anr vs Special Judicial Magistrate & Ors, (1998) 5 SCC 749*** wherein it has been categorically held that the Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations levelled or otherwise and then examine if any offence is *prima facie* committed by any of the accused. The relevant extract of the said judgment is reproduced as under:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the 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 allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even

himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

13. As a sequel to the above, this Court does not find any perversity or illegality in the impugned orders passed by the Courts below. Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

13.09.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No