

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-10164-2020 (O&M)
Date of decision: 13.04.2023

RAJA AND OTHERS

....Petitioners

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CRM-M-15257-2022 (O&M)

RAMAKANT SHARMA

....Petitioner

Versus

STATE OF HARYANA AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr.MadhurPanwar, Advocate for
Mr. Aman Pal, Advocate for the petitioners

Mr. DhruvSihag, AAG Haryana

Mr. S.N. Pillania, Advocate for respondent No.2

AMAN CHAUDHARY. J.

1. This common order shall dispose of the above-mentioned two criminal miscellaneous petitions, as both the petitions arise out of the same FIR.
2. Present petitions have been filed for quashing the protest petition/criminal complaint No.COMI/88/2014 dated 07.07.2015, Annexure P-7 and protest petition/criminal complaint No. SC 226 of 2018 dated 07.07.2015, Annexure P-7, in FIR No.180 dated 04.04.2012, Annexure P-1 under Sections 306,34IPC and for setting aside the summoning order dated 16.07.2018, Annexure P-5, whereby the learned Magistrate had summoned the petitioners and to quash

all subsequent proceedings arising therefrom.

3. Learned counsel for the petitioners would contend that the complainant had initially got lodged FIR, which was thoroughly investigated by the Special Investigation Team headed by DSP, Jind, wherein all the allegations levelled against the petitioner were found to be false and the cancellation report dated 28.06.2012 was submitted before the Court. The learned Magistrate vide order dated 16.07.2018, wrongly summoned the petitioners, while recording that the complainant was not satisfied with the investigation and referring to facts of some other case that was not related with the present one, shows complete non-application of mind. Even the cancellation report was not taken into consideration as required under Section 210 CrPC. The Magistrate merely mentioned that sufficient ground is established for proceeding against the petitioners without stating as to what was the sufficient evidence available. The order is non-speaking as it records no reasons. Reliance has been placed on the judgments of this Court in the case of **Kuldip Raj Mahajanvs. Hukam Chand**, (2008) 1 RCR (Cri) 370, and **SaveraSidhuvs. HarleenSidhu and another**, (2011) 2 RCR (Cri) 442.

4. Learned counsel appearing for the State stated the order summoning the petitioners has been rightly passed. However, learned counsel for the complainant, faced with the fact that the Magistrate had taken into notice the facts of some different case, submits that he has no objection for remand of the case for fresh decision.

5. Heard learned counsel for the parties.

6. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot possibly be set into motion as a matter of course. 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, as held by Hon'ble The Supreme Court in the case of **M/s Pepsi Limited vs. Special Judicial Magistrate**, (1998) 5 SCC 749.

7. It may be accentuated that the FIR lodged under Sections 306, 34 IPC contained allegations against the present petitioners with regard to harassment of the deceased by levelling false allegations of he having not repaid the debt, which was investigated by a Special Investigation Team consisting of five police officers and a cancellation report was submitted, with which the complainant felt discontented.

8. Upon having filed a protest petition, the Magistrate summoned the petitioners, however in the impugned order it has been observed that, “Moreover perusal of oral as well as documentary evidence available on case file prima facie discloses that alleged vehicle has been registered in name of two persons.” These surely were not the facts of the case.

9. It would be profitable to make a reference to the judgment of the

Delhi High Court in the case of **Ajay Khandelwal vs. State and another**, 2003 (6) AD (Del) 485, followed in **Atma Ram Singhal vs. State**, 2007 (5) AD (Del) 717, wherein while setting aside the summoning order and remitting the case to learned Metropolitan Magistrate to consider the same afresh and pass appropriate orders, it held that in case the Magistrate decides to proceed further in the case wherein cancellation report has been submitted, it is incumbent upon him to deal with the conclusion of the said report instead of dismissing the same brusquely, and it was the duty of the Magistrate to at least indicate his mind as to why he still wanted to proceed in the matter and summon the accused persons.

10. This Court in the case of **Kuldip Raj Mahajan**(supra), quashed the summoning order passed by the Magistrate the cancellation report had not been taken into consideration by holding thus:-

“10. In the aforesaid context, learned counsel for the petitioner submitted that inspite of having called report from the Investigating Officer vide order date 1.9.2000 (Annexure P-18), the learned Magistrate, while passing the impugned summoning order dated 19.9.2002, did not take into consideration the cancellation/investigation report of the police. Perusal of impugned summoning order (Annexure P-2) reveals that there is no reference at all to the investigation report/cancellation report of the police in the summoning order. Without considering the investigation report/cancellation report of the police, the impugned summoning order could not have been legally passed by the learned Magistrate. The respondent, despite knowledge, concealed the cancellation report of the police from the learned Magistrate. This is another indicator of mala fide on the part of the respondent.

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13. Learned counsel for the respondent emphasized that disputed questions of fact cannot be adjudicated upon in the instant petition under Section 482 of the Code. Reliance in support of this contention has been placed on judgment in the case of **T.BanamberPatra and others v. Vinod Kumar Sethi and another**, reported as 2007 (1) Law Herald (P&H) 54 and also on an unreported order dated 12.1.2006 of this Court in Crl. Misc. No. 2052-M of 2006 titled as **Ranjit Singh and others v. Sharda Devi**. There cannot be any quarrel with this legal proposition. Disputed questions of fact cannot

be gone into in a petition under Section 482 of the Code. However, this Court cannot be a helpless spectator when it is made out that the criminal prosecution is mala fide and an abuse of the process of the Court. In fact, this Court has inherent power and corresponding duty to prevent abuse of the process of any court or otherwise to secure the ends of justice. In the instant case, the impugned complaint in result of mala fide as the respondent was nursing grudge against the petitioner as discussed herein above. The witnesses cited by the respondent were also aggrieved against the petitioner. The alleged incidents dated 9/10.9.1999 were not mentioned in letter dated 10.9.1999 (Annexure R-4) sent by the respondent. There was long and unexplained delay in reporting the matter to the police. After investigation by Gazetted Officer, the FIR lodged in the same matter was found to be false and cancellation report was submitted by the police. The respondent, despite being aware of the cancellation report, concealed the same from the learned Magistrate. The impugned summoning order has also been passed without considering or even referring to the cancellation report. Keeping in view all these circumstances, it is a fit case in which this Court has to exercise its inherent powers under Section 482 of the Code by quashing the impugned complaint and summoning order so as to prevent the abuse of process of court and to secure the ends of justice. In addition to it, the alleged offences are also not made out from the allegations in the impugned complaint.”

11. This Court in the case of **SaveraSidhu** (supra), observed that, “The argument that violation of Section 210 Cr.P.C does not vitiate the proceedings in the facts of the present case as both the complaint and State case stand committed to the Court of Sessions, has no merit. In case, a charge sheet is presented under Section 173 Cr.P.C and the Magistrate, on the basis of the complaint without taking into consideration the report under Section 173 Cr.P.C, on the same set of allegations, comes to the conclusion that no offence is made out, the same is liable to cause prejudice to the complainant, whereas, in case, a cancellation report is submitted in the FIR and the Magistrate without taking into consideration the cancellation report comes to the conclusion that a prima-facie case is made out, the same is likely to prejudice the accused. Thus, ignoring the pendency of the

investigation in an FIR, shall prejudice one of the two parties in either of the two situations. As such, the violation of Section 210 Cr.P.C will vitiate the proceedings. Hence, the provisions of Section 210 Cr.P.C requiring the Magistrate to stay the proceedings of an enquiry or a trial and call for a report on the matter from the police officer conducting the investigation was equally mandatory.”

12. Further still, there is nothing that would reveal from the order impugned in the case in hand, that the cancellation report submitted by the SIT was considered by the Magistrate, it being a mandate of Section 210 CrPC, as explicated in the afore-referred judicial pronouncements.

13. The Magistrate while summoning in a case wherein the complainant has expressed his dissatisfaction with the investigation carried out, must take into consideration that it is natural for the complainant, being an interested party, to not concur with the investigation carried out, particularly if it does not result as envisioned by him.

14. Having meticulously considered the facts and circumstances of the case, statement made by the learned counsel for the complainant and in light of the enunciation of law, the impugned order summoning the petitioners deserves to be set aside.

15. As a sequel thereto, the instant petitions are partly accepted. The impugned summoning order dated 16.07.2018, Annexure P-5 is set aside, and the case is remitted to the Magistrate for consideration of the same afresh, in accordance with law.

16. The observations made hereinabove are only for the purpose of adjudication of the present petitions and shall not be construed as an expression of

opinion on the merits of the case.

17. A photocopy of the judgment be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

April 13, 2023
S.Sharma(syr)

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