

239 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34660-2018
DATE OF DECISION:-21.02.2023

Dalbir Singh Teji

...Petitioner.

Vs.

Ranjit Kaur

...Respondent..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Mansur Ali, Advocate and
Mr. Raj Sumer Singh, Advocate,
for the petitioner.

None for the respondent.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of criminal complaint No.COMI/6492/2013 dated 07.02.2013, titled as “Ranjit Kaur vs. Mr. Teji, Jail Superintendent and others”, besides the summoning order dated 02.04.2014 passed by the court of learned JMIC, Kapurthala, whereby the petitioner was ordered to be summoned to face trial for the commission of offence punishable under Section 304-A/34 IPC.

Very briefly, the facts of the case are that one, Jaspal Singh, who happened to be the husband of respondent-complainant was named as an accused in FIR No.43 dated 06.07.2012, registered under Sections 15/16/85 of the NDPS Act, at Police Station Begowal, Kapurthala and was taken into custody, confined in Central Jail Jalandhar at Kapurthala, where he unfortunately expired on 24.07.2012 while being in judicial custody.

Alleging negligence on the part of jail authorities, besides even against the doctor concerned, complaint No.COMI/6492/2013, dated 07.02.2023 came to be filed at the instance of respondent-complainant before the court of Chief Judicial Magistrate, Kapurthala for summoning them for offence punishable under Section 304-A IPC read with Section 34 IPC. In the abovementioned complaint, the petitioner was summoned for the offence punishable under Section 304-A/34 IPC by the court of JMIC, Kapurthala, vide its order dated 02.04.2014. It is the aforesaid complaint as well as the summoning order, which have been impugned by way of present petition.

Learned counsel for the petitioner submits that the husband of respondent-complainant died on 24.07.2012, being an inmate at Central Jail Jalandhar at Kapurthala, however, petitioner, who was previously posted as Deputy Superintendent, New Modern Central Jail, Jalandhar at Kapurthala was transferred to District Jail, Ferozepur vide order dated 06.12.2011 (Annexure P-8 at page 68) passed by the Department of Home Affairs and Justice (Jails Branch), Government of Punjab. Further, he refers to an order dated 16.11.2012 (Annexure P-8/A at page 72) passed by the Principal Secretary, Government of Punjab, Home Affairs and Justice Department, vide which, the petitioner was brought back as Deputy Superintendent Grade-I (S), Central Jail Jalandhar at Kapurthala from the post of Deputy Superintendent at District Jail Ferozepur and thus, submits that on the fateful day i.e. 24.07.2012, the petitioner was not even posted in Central Jail Jalandhar at Kapurthala and therefore, he could not have been implicated or summoned on account of unfortunate death of the husband of respondent-complainant by attributing any kind of negligence to him.

While referring to post-mortem report dated 25.07.2012 (Annexure P-3 at page 19), the chemical examiner report (Annexure P-4 at page 24) and the opinion given by doctor concerned (Annexure P-5 at page 27), learned counsel for the petitioner also submits that it was a case of no injury, nor even poison was found in the body, as the cause of death apparently was given as “coronary insufficiency” by the doctor. In view of the aforesaid, learned counsel for the petitioner further submits that the trial court went wrong while passing the summoning order dated 02.04.2014 against the petitioner without even going through the relevant facts and records, merely by relying upon the statement of respondent-complainant alone.

In response to the notice of motion order passed by this Court on 05.09.2018, Mr. Kanwal S. Walia, Advocate appeared on behalf of respondent, though, no reply was filed. For the past few dates, no one appeared on behalf of respondent-complainant and, thus, vide order dated 31.01.2023, the registry of this Court was requested to inform Mr. Kanwal S. Walia, Advocate, which was duly complied with as per the report made by the registry, however, still no one has chosen to appear on behalf of the respondent.

I have heard learned counsel for the petitioner and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

The incident in the present case which resulted into the unfortunate demise of Jaspal Singh, occurred on 24.07.2012, while he was an inmate in Central Jail, Jalandhar at Kapurthala, however, from the perusal of orders dated 06.12.2011 and 16.11.2012 (Annexures P-8 and P-

8/A) passed by the Home Affairs and Justice Department (Jails Branch) Government of Punjab, it can easily be traced out that at the relevant point in time, the petitioner was not even posted as Deputy Superintendent, Central Jail Jalandhar at Kapurthala, he being posted as Deputy Superintendent in District Jail, Ferozepur. Thus, finding the present to be an exceptionally rare case wherein the aforementioned two orders have been passed by the Department of Home Affairs and Justice, this Court finds no reason to doubt about the authenticity of this accredited information, which clearly enables me to examine the correctness of allegations made in the complaint before finding those to be frivolous. Examination of question of fact about correctness of allegation can be made in exceptionally rare cases, so as to prevent abuse of process of court and to secure the ends of justice, as held by Hon'ble Supreme Court in cases of ***“Daxaben vs. The State of Gujrat and others” 2022(3) Apex Court Judgment 62*** and ***“State of Punjab vs. Kasturi Lal and others” 2004(12) SCC 195***. Relevant portions from paragraphs number 49 and 10 from the aforementioned two judgments respectively are reproduced hereunder for reference:-

“Para 49 of Daxaben's case (supra) is as under:-

“In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegation in the complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

“Para 10 of Kasturi Lal's case (supra) is as under:-”

Exercise of power under [Section 482](#) of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of [the Code](#). It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under [the Code](#), (ii) to prevent abuse of the process of court, and (iii) to otherwise

secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice. While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complainant, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

In view thereof, once, the petitioner not even posted at Central Jail Jalandhar, Kapurthala on the fateful day i.e. 24.07.2012, there was no question of any kind of negligence on his part while making effort to save the life of husband of the respondent-complainant by the Jail authorities at Kapurthala. Moreover, the aforesaid two documents were never brought to the notice of trial court at the time of consideration for the purpose of summoning of the petitioner, thereby, resulting into serious prejudice to his

rights resulting into passing of the impugned summoning order dated 02.04.2014.

Though, an effort has been made at the instance of petitioner so as to contest the summoning order even by referring to the post-mortem report, chemical examiner report as well as the opinion given by the doctor, however, the same before reliance requiring proof, I do not find any reason to rely upon the same so as to go into the merits of allegations about the alleged negligence on the part of jail authorities while providing medical help to the husband of respondent-complainant, which resulted into his death on 24.07.2012.

In view of the observations made hereinabove and upon appreciation of facts based on the public documents i.e. aforementioned two orders dated 06.12.2011 and 16.11.2012 (Annexures P-8 and P-8/A) passed by the Home Affairs and Justice Department, the petitioner not even posted at Central Jail Jalandhar at Kapurthala on the date of death of husband of the respondent-complainant, he could not have been summoned under Section 304-A read with Section 34 IPC. Therefore, the complaint as well as summoning order dated 02.04.2014 as regards the petitioner, are hereby quashed.

Resultantly, the present petition is allowed.

21.02.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No