

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39801-2015 (O&M)

Date of Decision: 21.03.2023

Kundan Lal

... Petitioner

VS.

Fg. Officer Sanjay Kumar Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Amit Jaswal, Advocate for the petitioner

Mr. JP Verma, Advocate for the respondent

Sandeep Moudgil, J.

The petitioner seeks quashing of the order dated 14.05.2014 passed by JMIC, Ambala (Annexure P1) whereby the Magistrate declined to summon the accused person and for quashing order dated 16.01.2015 passed by Addl. Sessions Judge, Ambala (Annexure P2) whereby the revision petition filed by the petitioner has been dismissed.

A complaint under Sections 120-B, 302 and 304 of IPC was instituted against the respondent alleging therein that Sunita and Lakshmi Devi had been working as domestic servant in the house of respondent who had allowed to live them with family members by providing two rooms with kitchen and toilet. On 28.10.2007, when his wife had told the respondent that since they had taken premises on rent, therefore, they would be shifted to their rented accommodation and then respondent objected to it. On 01.11.2007, the petitioner's son was not allowed to enter the house of respondent by the military guards in his presence and other family members. A heated argument took place between respondent and his son and then, respondent threatened his son that he would kill him. Respondent had also

called the army personnel and had asked them to set his son on fire. On hearing this, his son ran towards the Gandhi Ground, but those army persons had caught his son and after sprinkling kerosene oil on him and his son was set on fire. On 06.01.2007, his son succumbed to the injuries in PGI, Chandigarh and thereafter the complaint was filed which has been dismissed as the trial court did not find *prima-facie* case to summon the respondent as accused under Sections 120-B, 302 and 304 of IPC. The revision petition filed by the petitioner also has been dismissed.

Learned counsel for the petitioner submits that there was sufficient evidence to summon the respondent as accused for the commission of offence under Sections 120-B, 302 and 304 of IPC. It was further argued that the courts below did not appreciate the factual matrix of the case, rather have returned findings on the basis of presumption and assumption.

It is further contended that the courts below have erred in coming to the conclusion that the complaint is not maintainable as the petitioner has not disclosed the names of the persons who set the deceased on fire. It is submitted that there is no means with which the petitioner could have known the names of the army jawans who set the deceased on fire. Moreover, the police did not register the FIR and investigate the case which constrained the petitioner to file the present complaint.

Learned counsel for the respondent submitted that the orders passed by both the courts below is based on law and facts. It is only on examination of the record that the courts below have concurrently held that the respondent need not be summoned.

Having given a thoughtful consideration to the rival submissions and after thorough examination, it is observed that according to allegations leveled in the complaint, it can be easily gathered that the courts below have rightly observed that the respondent neither sprinkled kerosene oil nor set his son on fire. Rather, if any other two person on the direction of respondent committed the alleged crime, then it was required for the petitioner to make those two army personnel as party in the array of complaint. However, it is not understandable as to why the petitioner did not disclose the name of prime accused in the array of complaint. Further, the alleged incident took place on 01.11.2007 and his son unfortunately died on 06.11.2007 in PGI, Chandigarh, therefore, there was sufficient time for the petitioner to launch prosecution either by oral request to doctor for recording dying declaration or by making complaint in writing to the Incharge, of area concerned police station. But nothing of the sort was being proved in preliminary evidence by the petitioner. Further, there is no iota of link evidence on record from the date of incident till date of filing this complaint on 18.03.2009. The alleged incident was taken place on 01.11.2007 but the complaint was instituted on 18.03.2009 after expiry of more than 16 months. The inordinate delay in filing complaint before Court of Illaqa Magistrate would certainly draw adverse inference relating to question of manipulation after due thought etc. against petitioner as he did not explain delay in a judicious manner.

The courts below have rightly observed that the motive behind incident could not be explained in a proper manner, rather appears to be result of manipulation and after due thought just to shift undue burden upon a public servant. It is worth mentioning here that the respondent has been

discharging duty in armed forces, in that eventuality, petitioner was required to seek permission u/s 197 CrPC for prosecution of respondent from competent authority. Further, petitioner may also make complaint to higher authority with a request to initiate proceeding against respondent under section 475 CrPC, but no such proceeding was being proved by petitioner. So, mere filing complaint without adding prime accused and without leading chain of link evidence would infer to say that he has entirely failed to establish prima-facie case to summon the respondent as accused in a heinous crime by invoking provision under section 204 CrPC.

In **Gian Chand Nagpal Vs. State of Punjab 1978 CLR 64 P &H**, it was observed that existence of sufficient ground for proceeding against the accused is essential. The summoning order cannot be passed mechanically u/s 204 CrPC in the absence of sufficient material showing prima-facie case against the accused. The summoning of the accused without the material evidence amounts to abuse of process of Court and encourages frivolous complaints. The accused cannot be summoned just on the asking of petitioner without any basis of material.

In **Pepsi Foods Limited and another versus Special Judicial Magistrate and others, 1998 AIR (SC) 128**, it was held by the Hon'ble Apex Court that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set in 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. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence. Magistrate has to carefully scrutinize the evidence brought on

record and may even himself put questions to the petitioner 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. The exercise of due perspicacity is the need of the hour at the nascent stage of setting of criminal law in motion in terms of section 190 (1) (a) of the Code of Criminal Procedure, 1973. If the Judicial conscience of the Magistrate is not satisfied for summoning the accused, there is nothing which makes him feel helpless. To prove handy for troubling some innocent citizen is not expected of the trial Court as it is neither the requirement of the law nor in the interests of justice.

In “*Inder Mohan Goswami Vs. State of Uttaranchal, 2007 (4) R.C.R. (Criminal) 548 (SC)*”, it was held by the Hon'ble Apex Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused.

In view of the above, this Court does not find any infirmity or illegality in the orders passed by both the courts below.

Dismissed.

21.03.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No