

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CRM-M No.6890 of 2017 (O&M)**

Reserved on:14.12.2023

Pronounced on:21.12.2023

Tejinder Singh @ Tajinder Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunil Panwar, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana and
Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Karan Pathak, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of impugned order dated 06.06.2015 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class, Gurgaon by which the complaint filed by the petitioner against respondent Nos.2 and 3 has been dismissed as well as the impugned order dated 24.10.2016 (Annexure P-3) passed by learned Additional Sessions Judge, Gurgaon vide which the revision petition against the aforesaid order has also been dismissed.

2. The facts, in brief, are that the petitioner filed a criminal complaint under Sections 147, 148, 149, 323, 325, 307 and 506 IPC against nine accused, including respondents No.2 and 3, in relation to an incident dated 03.05.2011 wherein the learned trial Court summoned six accused and dismissed the complaint against the rest vide impugned order dated 06.06.2015. Aggrieved

by non-summoning of accused No.7 to 9 including respondent No.2 and 3 herein, the petitioner filed a revision petition, which was dismissed vide impugned order dated 24.10.2016 passed by the learned Additional Sessions Judge, Gurgaon. Aggrieved against the said orders, the petitioner has approached this Court by way of instant petition.

4. Learned counsel for the petitioner contends that both the impugned orders are perverse and illegal and are a result of mis-appreciation of facts, hence, liable to be set aside. It is further contended that direct and active involvement of respondents No.2 and 3 in the commission of the crime is writ large, as is evident from the complaint filed by the petitioner before the learned trial Court, which stands corroborated by the statement made by the complainant as CW-4. It is also contended that respondents No.2 and 3, being police officials, acted in derogation of their official duty. Respondent No.3 had abused the wife of the petitioner whereas respondent No.2 slapped on her ear, causing injury to her, which has been duly corroborated by testimonies of PW-1 and PW-3.

5. It is further contended that the trial Court has erred in not appreciating the legal proposition that at the stage of summoning only a *prima facie* case for proceeding against the accused is to be seen. At such preliminary stage, evidence beyond all reasonable doubt is not necessary to be established and examination of all the cited witnesses is not necessary.

6. Per contra, learned counsel for respondent No.2 contends that a bare perusal of the complaint filed by the petitioner makes it clear that the said respondent had no role in the commission of the said crime. Injured-Suman wife of the petitioner has not been examined. Moreover, the statement of PW1 Dr. Someshwar Singh indicates that the injured-Suman was examined on 14.05.2011 whereas the occurrence had taken place on 03.05.2011. Further,

statement of PW-3 Dr. Amit Kumar would indicate that she was examined on 20.05.2011. As such, unexplained delay in the medical examination of said Suman wife of petitioner makes it clear that respondents No.2 & 3 have rightly not been summoned by the learned trial Court.

7. Having heard learned counsel for the parties and after perusing the record, it transpires that the learned trial Court has dealt with the issue in right perspective. In the absence of examination of Suman and her medical examination after 10 days from the occurrence would create doubt on the version put forward by the petitioner. FIR No.237 dated 04.05.2011 registered under Sections 323 and 506 IPC regarding the same occurrence has been registered against the petitioner and his wife and the trial Court has concluded that the intention of the petitioner herein does not seem to be *bona fide*, rather seems to implicate respondents No.2 and 3 with an oblique motive to harass them.

8. While dealing with similar controversy, a two Judge Bench of the Hon'ble Supreme Court in ***Vishnu Kumar Shukla and another Vs. The State of Uttar Pradesh and another*** in Criminal Appeal No.3618 of 2023 decided on 28.11.2023, speaking through Justice Ahsanuddin Amanullah, has held as under:-

*“19. In **Rumi Dhar v State of West Bengal, (2009) 6 SCC 364**, this Court held that the Judge concerned with an application under Section 239, CrPC has to ‘... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.’*

*20. In **State of Tamil Nadu v N Suresh Rajan, (2014) 11 SCC 709**, it was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections*

227 and 228, CrPC are wellsettled, courtesy, inter alia, *State of Bihar v Ramesh Singh*, (1977) 4 SCC 39; *Union of India v Prafulla K Samal*, (1979) 3 SCC 4; *Stree Atyachar Virodhi Parishad v Dilip N Chordia*, (1989) 1 SCC 715; *Niranjan Singh Karam Singh Punjabi v Jitendra B Bijaya*, (1990) 4 SCC 76; *Dilawar B Kurane v State of Maharashtra*, (2002) 2 SCC 135; *Chitresh K Chopra v State (Government of NCT of Delhi)*, (2009) 16 SCC 605; *Amit Kapoor v Ramesh Chander*, (2012) 9 SCC 460; *Dinesh Tiwari v State of Uttar Pradesh*, (2014) 13 SCC 137; *Dipakbhai Jagdishchandra Patel v State of Gujarat*, (2019) 16 SCC 547; and *State (NCT of Delhi) v Shiv Charan Bansal*, (2020) 2 SCC 290. We need only refer to some, starting with *Prafulla K Samal* (supra), where, after considering *Ramesh Singh* (supra), *K P Raghavan v M H Abbas*, AIR 1967 SC 740 and *Almohan Das v State of West Bengal*, (1969) 2 SCR 520, it was laid down as under:

‘10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.’
(emphasis supplied)

21. In *Niranjan Singh Karam Singh Punjabi* (supra), this Court was alive to reality, stating that ‘... it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is

*opposed to common sense or the broad probabilities of the case.’ If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is empowered to discharge the accused, as pointed out in **Sajjan Kumar v Central Bureau of Investigation, (2010) 9 SCC 368**. The Court, in **Dinesh Tiwari (supra)** had reasoned that if the Court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the Charge Sheet. As to what is ‘strong suspicion’, reference to **Dipakbhai Jagdishchandra Patel (supra)** is warranted, where it was explained that it is ‘... the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.’*

9. Recently, the Hon’ble Supreme Court in **Shashikant Sharma and others Vs. State of Uttar Pradesh and another** passed in Criminal Appeal @ SLP (Criminal) No.5323 of 2023 on 01.12.2023 has held that from the admitted evidence of the prosecution as reflected in the documents filed by the Investigating Officer in the report under Section 173 Cr.P.C., if the necessary ingredients of an offence are not made out, then the Court is not obligated to frame charge for such offence against the accused.

10. A two judge Bench of the Hon’ble Supreme Court in **M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate AIR 1998 SC 128** speaking through Justice D.P. Wadhwa, has held 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. The 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.”

11. In view of the aforesaid facts and circumstances, this Court does not find any illegality or perversity in the orders passed by both the Courts below and the same are upheld. Resultantly, the instant petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

December 21, 2023
Pankaj*

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