

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-770-2014

Date of Decision : 03.05.2023

Jagdish Chander @ Gurbachan Singh

..... Petitioner

Versus

Satnam Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Naresh Prabhakar, Advocate
for the petitioner.

Mr. Suneel Ranga, Advocate
for respondents No.1 and 2.

None for respondent No.6.

VIKRAM AGGARWAL, J

The present revision petition is directed against the order dated 27.01.2014, passed by the Judicial Magistrate Ist Class, Ellenabad vide which the complaint filed by the petitioner-complainant under Sections 302, 148, 149 IPC, Section 25 of the Arms Act and Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was dismissed.

The facts, as emanating from the record are that the petitioner-complainant filed a criminal complaint wherein it was stated that on 17.09.2008, Baggu Ram, father of the petitioner-complainant, was murdered by the respondents-accused. It was averred in the complaint that on

17.09.2008, at about 8:00 p.m., the niece of the complainant namely Sonu informed him that Baggu Ram was severely ill and there was no arrangement of any conveyance to take him for medication. She asked the complainant to reach village Kuttbadh in a vehicle. The complainant asked his niece as to what had happened upon which she told him that Baggu Ram had an altercation with Satnam Singh etc. The petitioner-complainant went from Sirsa to Village Kuttbadh in a vehicle. Upon reaching, he tried to talk to his father Baggu Ram but, on account of his having vomitted out blood, he could not talk to him. The complainant, alongwith his mother immediately proceeded for Sirsa taking Baggu Ram for treatment. He was got admitted in the Government Hospital at Sirsa. The doctor checked him up and declared him dead. It was stated in the complaint that his father Baggu Ram had a dispute with Satnam Singh etc. with regard to two acres of land situated in Village Kuttbadh and Baggu Ram had instituted one case with regard to partition of the said land in the Court of Tehsildar at Ellenabad and its appeal was pending in the Court of the Asstt. Collector First Grade. Certain details about the litigation were given. It was stated that on 17.09.2008, Baggu Ram alongwith his grand son (daughter's son) Kuldeep Singh @ Sahab had gone to the Court of Tehsildar, Ellanabad and Asstt. Collector First Grade, Ellanabad on his motorcycle, to attend the hearings in this case and had reached the Court at 9:30 a.m. Ram Singh alongwith his son Pritam Singh etc. had also gone to Ellanabad Court to attend the hearings. After attending the hearings, Baggu Ram alongwith his grand son Kuldeep Singh had started back for his village Kuttbadh at about 5:50 p.m. Ram Singh alongwith his friend Gopal son of Mehna Singh had also started back for his village

Kuttbadh about 10 minutes after Baggu Ram meaning thereby that Ram Singh was in a way following Baggu Ram and Kuldeep Singh. Satnam Singh, his son Ranjit @ Teenu and Bikar Singh had also gone to attend the hearings in Ellenabad Court and had started back for village Kuttbadh. It was alleged in the complaint that when Baggu Ram and Kuldeep reached the outskirts of village Kuttbadh at about 6:00 p.m. near the fields of Jagtar Singh, respondents-accused Joga Singh, Balkar Singh, Jagdev Singh and Partap Singh stopped the motorcycle of Kuldeep Singh on which deceased Baggu Ram was travelling. Jagdev Singh assaulted Kuldeep Singh. In the meantime, Satnam Singh, Ranjit Singh and Bikar Singh reached the spot. Satnam Singh exhorted and then caught hold of Baggu Ram. Bikar Singh gave a lathi blow on the hands of Baggu Ram. Ranjit Singh and Jagdev Singh also gave lathi blows to him. Partap Singh who was having a pistol threatened Kuldeep Singh and Baggu Ram. Caste related abuses were also given to both Baggu Ram and Kuldeep Singh. As a result of the severe beatings, Baggu Ram fell down on the road and the assailants fled from the scene of the crime. Ram Singh and Gopal witnessed the incident. After reaching home, Baggu Ram told about the incident to his wife. The matter was reported to the police. FIR No.310 dated 18.09.2008 was registered under Section 302/34 IPC. However, the police was in league with the accused as a result of which, it did not investigate the matter properly and filed an untraced report in the matter. This led to the filing of the criminal complaint by the petitioner-complainant.

In the preliminary evidence, 10 witnesses namely PW1 EASI Chhotu Ram, PW2 Amar Kaur, wife of deceased Baggu Ram, PW3 Gopal

Singh, PW4 Ram Singh, PW5 Kuldeep, PW6 Jagdish, PW7 Sonu, PW8 Dr. Pawan Kumar, PW9 Dr. Viresh Bhushan and PW10 Dr. H.R.Wasir were examined by the petitioner-complainant.

The trial Court examined the preliminary evidence and dismissed the complaint leading to the filing of the present revision petition.

I have heard learned counsel for the parties and have perused the record.

Learned counsel for the petitioner has strenuously urged that the trial Court gravely erred in dismissing the complaint. It has been submitted that the trial Court examined the matter and while taking a final decision, considered the stand of the defence also whereas at that stage, the trial Court was not required to delve deep into the issue. Learned counsel has referred to the judgment of the trial Court and has submitted that the same is not sustainable. Learned counsel has also referred to the statements of the witnesses and has submitted that a prima facie case was duly made out and the trial Court wrongly relied upon the untraced report filed by the police while dismissing the complaint filed by the petitioner. It has been submitted that the trial Court also wrongly came to the conclusion that the witnesses who had deposed in the preliminary evidence were interested witnesses. It has been argued that at that stage there was no occasion for the trial Court to observe this fact. In support of his contentions, learned counsel has placed reliance upon the judgments of Hon'ble Supreme Court of India in **Srinivas Gundluri vs. M/s. Sepco Electric Power Construction Corpn. & Ors. 2010 CriLJ 4457, M/s India Carat Pvt. Ltd. vs. State of Karnataka and another AIR 1989 Supreme Court 885, Jagdish Ram vs. State of Rajasthan and**

Anr. 2004 (2) R.C.R. (Criminal) 194, , Kewal Krishan vs. Suraj Bhan and another AIR 1980 Supreme Court 1780, Chandra Deo Singh vs. Prakash Chandra Bose alias Chabi Bose and another AIR 1963 Supreme Court 1430 as well as the judgment of a Coordinate Bench of this Court in Gurdeep Kaur vs. Balbir Singh and others 2005 (2) R.C.R. (Criminal) 205

On the other hand, learned counsel for the respondents has, with equal vehemence, opposed the arguments advanced by learned counsel for the petitioner. It has been submitted that the judgment passed by the trial Court is legal and valid. Learned counsel has submitted that after thorough investigation, the police had filed an untraced report in the case. It has been submitted that the Investigating Agency wanted to conduct a lie detection test of the complainant party which was refused by them. It has been contended that this fact itself would show that the case of the petitioner-complainant was false. Learned counsel has also submitted that as per the postmortem report, there was a ligature mark on the neck of the deceased whereas no allegation of strangulation was levelled by the witnesses and, therefore, the trial Court rightly disbelieved the case of the complainant. Learned counsel has also submitted that there was a delay of 26 hours in reporting the matter to the police and the same had occurred since the complainant party was busy in weaving their story against the respondents-accused. Learned counsel has submitted that the order passed by the trial Court does not call for any interference.

I have considered the submissions made by learned counsel for the parties.

Before advertng to the merits of the case, it would be important to examine as to what principles are to be followed by a trial Court at the stage of summoning of accused. It is settled law that at the stage of summoning, only a prima facie case is to be made out and the trial Court is not required to delve deep into the issue. In the case of *M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate 1997 (4) R.C.R. (Criminal) 761*, the Hon'ble Supreme Court of India was examining the legality of a judgment dated 23.09.1996 wherein the quashing petition filed by the appellants had been dismissed. In this case, it was held by the Hon'ble Apex Court that summoning of an accused is a serious matter. It was held that criminal law cannot be set into motion as a matter of course. The observations of the Hon'ble Supreme Court of India are as under:-

“26. 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 that would 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.”

It is, therefore, clear that the order of the Magistrate while dealing with the criminal complaint must reflect the application of mind and the evidence has to be carefully scrutinized. In the case of **Sonu Gupta vs. Deepak Gupta and others 2015 (2) R.C.R. (Criminal) 32**, a three Judges Bench of the Hon’ble Supreme Court of India held that at the stage of cognizance and summoning, the Magistrate was required to apply his judicial mind only with a view to take cognizance of the offence or, in other words, to find out whether a prima facie case has been made out for summoning the accused persons or not. It was held that at this stage, the Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. In this case, the summoning order was upheld by the Hon’ble Apex Court. The relevant findings are as under:-

“7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case

has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

In the case of **Sau Kamal Shivaji Pokarnekar vs. State of Maharashtra & Ors. 2019 (2) R.C.R. (Criminal) 38** also, a similar view was taken. The Hon'ble Supreme Court held as under:-

“4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not Sonu Gupta v. Deepak Gupta and Ors. 2015(2) RCR (Criminal) 32 : 2015 (3) SCC 424 .”

In the said case also, the summoning order passed by the trial Court was upheld.

Reverting to the facts of the present case, one person unfortunately expired on 17.09.2008. An FIR was registered. Accused were specifically named. Eye witnesses were there. The police, somehow, filed an untraced report. It is strange that where the accused had been named, an untraced

report was filed instead of a cancellation report. What could not be traced is hard to understand. In any case, the complainant preferred a criminal complaint. Ten witnesses were examined. These ten witnesses included the eye witnesses also. They named the accused. Specific roles were attributed. The trial Court discussed their evidence and then dealt with the matter as if it was dealing with the issue at the time of the final decision of the trial. The trial Court should have adhered to the principles of law laid down by the Hon'ble Supreme Court of India. Even at that point of time, the law was the same. The trial Court should have kept in mind that it was required to examine the matter only from the perspective of a prima facie case and was not required to arrive at a conclusion whether the conviction was possible or not. In the considered opinion of this Court, the trial Court gravely erred in dismissing the complaint in such a serious matter. The argument of learned counsel for the respondent-accused that the complainant side had refused to undergo lie detection test would not be relevant at this stage and merely because they had refused to undergo lie detection test would not mean that the petitioner-complainant and the witnesses were lying and the respondents-accused were innocent. The fact of a ligature mark being present on the neck of the deceased was also not relevant at that stage. In any case, in the considered opinion of this Court, the decision of the trial Court is not sustainable as the trial Court also fell into error by terming the eye witnesses and other witnesses as interested witnesses at the stage of summoning without they having been cross examined. In the considered opinion of this Court, grave injustice has been caused to the petitioner-complainant as the alleged

incident took place in 2008 and we are already in 2023. In any case, mere efflux of time is no ground to deny justice to anyone.

In view of the aforementioned facts and circumstances, the present revision petition is allowed. The impugned order dated 27.01.2014 is set aside and the matter is remanded back to the trial Court with a direction to take a fresh decision and pass a fresh order after considering the evidence and the law on the subject in the correct perspective. The petitioner-complainant is directed to appear before the Sessions Judge, Sirsa on 15.05.2023 who shall then entrust the case to a Court of competent jurisdiction for disposal in accordance with law.

(VIKRAM AGGARWAL)
JUDGE

03.05.2023
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No