

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M-40261-2023

Date of Decision: *August 17, 2023*

Manjit Kaur

... *Petitioner*

Versus

Makhan Singh and another

... *Respondents*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Amit Mehta, Advocate,
for the petitioner.

Vivek Puri, J.

1. The petitioner has assailed the judgment dated 05.12.2022 passed by the Court of learned Additional Sessions Judge, Jalandhar, whereby the order dated 11.01.2021 passed by the Court of learned Judicial Magistrate First Class, Phillaur, in the complaint titled as "Manjit Kaur vs. Makhan Singh and another" dismissing the complaint at preliminary stage, was upheld.

2. Precisely, the petitioner had submitted a complaint under Sections 452, 323, 354, 295-A, 427, 506 read with Section 34 of the Indian Penal Code (for short 'IPC') against the respondents alleging that the respondents are her step sons and children from the first wife of the husband of the petitioner, who has since expired. The respondents never like the petitioner and her family. They wanted to throw her out of the house which fell to her share.

On 11.03.2018, Satnam Singh along with his wife Simarjit Kaur, who are the relatives of the petitioner had visited her house. At about 6.30 p.m., the petitioner and her family were busy in preparing the dinner. The respondents along with two unknown associates forcibly entered the house of the petitioner in a drunken condition. They abused the petitioner and her family in filthy language. The respondent no.1 exhorted the co-accused and respondent no.2 with the help of the associates caught hold the petitioner from hair and arms. The respondent no.1 slapped the petitioner and respondent no.2 inflicted fist blows on her back. The respondents outraged her modesty by inappropriately touching her. They pelted stones and brickbats which hit the doors and windows of the house of the petitioner and the windowpanes were smashed. An alarm was raised which attracted the aforesaid relatives of the petitioner and her son Dharminder Singh. They intervened and the assailants managed to slip away. The matter was reported to the police through a written complaint, but despite written complaint and numerous repeated reminders, no action was initiated against the respondents.

3. The petitioner led the preliminary evidence, wherein she examined herself as CW1. Besides, she has also examined Dharminder Singh CW2, Simarjit Kaur CW3 and Satnam Singh, CW4.

4. In terms of the order dated 11.01.2021, the complaint was dismissed by the Court of learned Judicial Magistrate First Class, Phillaur.

5. The petitioner preferred a revision petition and the same was dismissed vide judgment dated 05.12.2022 passed by the Court of learned Additional Sessions Judge, Jalandhar.

6. Learned counsel for the petitioner contends that the petitioner while appearing in the witness box has testified with regard to the allegations, on oath in the Court. Her version is also supported by the deposition of Dharminder Singh CW2, Simarjit Kaur CW3 and Satnam Singh CW4. The statement of the petitioner supported with the deposition of the eye witnesses who were present at the time of occurrence in the house make out sufficient grounds for summoning the respondents for having committed the offence regarding which the complaint has been submitted.

7. On the submission of the complaint, an inquiry as per the provisions of Section 202 of the Code of Criminal Procedure (for short 'Code') has been conducted. Such an inquiry is conducted for a limited purpose to find out as to whether prima facie case for issuance of process is made out on the basis of the material placed by the complainant without adverting to the defence of the accused that may be raised. Even at that point of time, the accused are not

required to be heard. The duty of the Magistrate is to scrutinize the material made available by the complainant during the course of inquiry under Section 202 of the Code and find out as to whether there is material on the basis whereof the process can be issued. In the event, there is lack of sufficient material to proceed further against the accused, the summoning of the accused is liable to be declined. The issuance of process should neither be mechanical nor should be made as an instrument of oppression for needless harassment to the accused.

8. Section 203 of the Code provides as following:-

“203. Dismissal of complaint – If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”

9. After examination of the complainant on oath and the witnesses, the Magistrate is required to dismiss the complaint, in the event, he finds that no offence has been committed or the statements of the complainant and the witnesses examined are not reliable. The expression “sufficient ground” used in Section 203 of the Code means that a prima facie case must be made out against the person

accused of committing the offence. Sufficient ground does not mean that sufficient ground for conviction, but such evidence as would be sufficient to put the accused on trial. The Magistrate is required to briefly record his reasons for dismissing the complaint. Moreover, the guiding principles for summoning of an accused in a criminal case, which is stated to be a serious matter, have been laid down in ***Pepsi Foods Ltd. and another vs. Special Judicial Magistrate and others, (1998) 5 SCC 749***, wherein it has been laid down as following:-

“27. 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. 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.”

10. It is significant to note that the occurrence allegedly took place on 11.03.2018 and the present complaint has been instituted on 17.07.2018. The first version of the case has allegedly been unfolded in the complaint dated 15.03.2018 submitted to the police. Significantly, such complaint has also been submitted after a delay of about 4 days from the date of occurrence. Although, the complainant has examined 3 witnesses to support her allegations, but significantly, the witnesses are her close relatives. In the instant case, the petitioner could have produced better and reliable evidence to indicate the involvement of the respondents in the commission of crime. There is a categorical case of the petitioner to the effect that the respondents along with the unknown assailants had thrown brickbats and stones which damaged the doors and windows of the house of the petitioner and windowpanes were smashed. Significantly, no photograph depicting the damage to any of the door, window, windowpane or scattered stones/brickbats in the house of the petitioner have been placed on record. Furthermore, the respondents

are the step sons of the petitioner. There is lack of material on record to indicate that the house, wherein the alleged occurrence took place exclusively belongs to the petitioner. In such circumstances, even the allegations with regard to trespassing cannot be accepted.

11. In these set of circumstances, there is lack of satisfactory and reliable material to indicate that there are sufficient grounds for proceeding against the respondents. Accordingly, no justified ground is made out to interfere in the concurrent findings recorded by the Courts below.

12. For the aforesaid reasons, finding no merit in the petition, the same is dismissed.

August 17, 2023

vk

(Vivek Puri)
Judge

Whether reportable : Yes

Whether speaking/reasoned : Yes