

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8427-2023 (O&M)
Judgment reserved on: 04.04.2024
Pronounced on: 05.04.2024

Sheela and others ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dhananjay Mittal, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG Haryana

Mr. Sunil Sihag, Advocate
for respondent no. 2.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court by way of filing the present petition under Section 482 Code of Criminal Procedure, 1973 (hereinafter Cr.P.C., for brevity) for quashing of the impugned order dated 17.09.2022 (Annexure P-1), passed by learned Additional Sessions Judge, Faridabad, in a revision filed by respondent no.2, whereby, order dated 28.09.2021 (Annexure P-5), passed by the learned Judicial Magistrate 1st Class, Faridabad, dismissing the protest petition filed by respondent no.2-complainant upon presentation of cancellation report, was set side.
2. Shortly stated, the instant case arises from FIR, bearing no. 121, dated 07.03.2018 under Sections 323, 326, 354A, 354B, 356, 379B, 382, 452, 506 of the IPC, registered at Police Station Sadar Ballabgarh, Faridabad. The FIR was registered after a complaint was moved by respondent no.2 under Section 156(3) of Cr.P.C., which bears number COMI-117-2018, following which the Magistrate ordered the registration of the same. The genesis of the

alleged scuffles lies in a property dispute. As per the allegations, on 18.01.2018 at about 7:00 p.m. respondent no.2-complainant witnessed petitioner no. 1-accused, namely, Sheela and petitioner no. 2-accused, namely, Preeti stealing wooden logs from her house, and when she requested them to not steal them, the petitioners-accused started verbally abusing and physically assaulting her. Upon hearing the commotion, the husband of respondent no.2-complainant tried to intervene, however, petitioner no. 3-accused, namely, Lokesh and petitioner no. 4-accused, namely, Deepak armed with lathis and entered the house of the complainant. The petitioners held the complainant by her hair, pressed her breast and struck her with fists, kicks and sticks. Moreover, the petitioners kept uttering expletives. A similar occurrence took place on 21.01.2018 at about 8:30 a.m. The complainant, her husband and her son were heading to Delhi, when they were ambushed by the petitioners and beaten with sticks, bricks, fists and kicks. On raising hue and cry by the complainant and her husband, the petitioners-accused fled from the scene while extending threats to kill.

3. Learned counsel for the petitioners *inter alia* contended that the learned Additional Sessions Court, Faridabad erred in allowing the revision petition as the learned Magistrate after examining the closure report and the evidence on record dismissed the complaint/protest petition by a detailed and well-reasoned order. Furthermore, the learned Additional Sessions Court erroneously interfered with the order of the trial Court in exercise of its revisional jurisdiction as the same could have been exercised only if there was any perversity in the order or that there was an error of procedure. Since neither of the two situations exist in the present case, the impugned order is not sustainable in law. In order to bolster his argument, the learned counsel places reliance on ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao***

Phalke and others 2015(1) R.C.R.(Criminal) 570 and Sumit Gupta and others v. State of Haryana and another CRM-M-6189-2013 (O&M) decided on 24.05.2016.

4. Learned counsel for the petitioners further submitted that the learned Additional Sessions Judge, Faridabad failed to appreciate that the doctor who was examined as CW-4 has neither conducted a medical assessment of the complainant nor that of the husband of the complainant. Moreover, there was a gap of 15 days between the alleged incident and the medical examination of the complainant's ear, for which no reasonable justification has been provided. Also, a perusal of the cancellation report discloses that no truth has been found in the allegations of the complainant. Lastly, there were consistent improvements in the four complaints moved by the complainant at different occasions before the police and the learned Judicial Magistrate.

5. Per contra, learned counsel for respondent no. 2 averred that the complainant is a victim of violent behaviour and has suffered at the hands of the petitioners. After the incident on 18.01.2018, the complainant was immediately medico-legally examined by a doctor at B.K. Hospital, Faridabad and the matter was reported to the police the very next day. Similarly, after respondent no. 2 and her family members were assaulted on 21.01.2018, all three injured persons were medico-legally examined and a study of the MLRs clearly shows the injuries suffered by them. Despite the fact that the MLRs clearly make out the commission of cognizable offence, no FIR was registered by the police. Further, the cancellation report has not given any detailed reasons as to why no offences under the relevant sections are made out, and as such the police failed to consider the MLRs of the victims before filing the cancellation report.

6. Learned counsel further argued that it is a settled proposition of law that the Court while taking the cognizance of an offence and issuing the process of summoning has to look into the material adduced before it prima facie and should not consider the defense version at all at this stage. The MLRs along with the testimony of the doctor, who has categorically stated that he has treated respondent no. 2-complainant and the injuries suffered by her, including ear drum perforation, which was declared grievous in nature, should have been prima facie sufficient to take cognizance of the offence but the learned trial Court wrongly dismissed the complaint/protest petition filed by respondent no. 2-complainant. Reliance in this regard was placed on ***Sonu Gupta v. Deepak Gupta and others 2015(2) R.C.R.(Criminal) 32, Vasanti Dubey v. State of Madhya Pradesh 2012(1) R.C.R.(Criminal) 588 , Satish Kumar Jatav v. State of UP and others 2022(3) R.C.R.(Criminal) 246, M/s Lifelong Meditech Ltd. And others v. Harpreet Singh, Proprietor M/s B.J.S. Pharmaceuticals CRM-M-28163 of 2011*** decided on 25.02.2015.

7. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the learned Magistrate while dismissing the protest petition, observed that no independent witness was examined and no clinching medical evidence has been brought on record to substantiate the complainant's allegations. Further, it was observed that there was consistent improvement and exaggeration of allegations in the statements tendered by the complainant and her husband. However, an examination of the testimonies of all the three victims i.e. the complainant, her husband and her son reveals that all have categorically deposed that the quarrel took place inside the house of the complainant and further, their statements are in consonance with each other with regard to the details of the incidents that occurred. Moreover, Dr. Amkit, who was

examined as CW4, conducted the medico-legal examination of the complainant and specifically stated that the complainant-respondent No.2 suffered an ear injury and ear drum perforation, resulting in loss of hearing in both the ears. Testimonies of the victims as well as the medical record adduced are enough to establish the existence of a prima facie case against the petitioners-accused. Considerations such as delay of 15 days in getting the complainant medically examined, consistent improvements in the allegations made by the complainant and her husband, and non-examination of independent witnesses, are not required to be considered at this stage. It is trite law that the learned Magistrate is not required to evaluate the standard and the veracity of the materials or evidence adduced by the complainant. The learned Magistrate was under no obligation to enter into the correctness of the allegations levelled against the petitioners. The only consideration at the stage of taking cognizance and summoning the accused is whether the material brought on record at its face value satisfies the ingredients of the offences so mentioned.

8. Here, it would be prudent to cite the ratio of law laid down by three-Judge Bench of the Hon'ble Supreme Court in ***Sonu Gupta v. Deepak Gupta and others 2015(2) R.C.R.(Criminal) 32***. Paras 7 and 8 of the said judgment are relevant for our consideration, which states as follows: -

“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.

8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.

9. Further, a two Judge Bench of the Hon'ble Apex Court, speaking through Justice Fazl Ali in ***Nagawwa v. V.S. Konjalgi, (1976) 3 SCC 736*** made the following observations: -

"5. Mr. Bhandare laid great stress on the words "the truth or falsehood of the complaint" and contended that in determining whether the complaint is false the Court can go into the question of the broad probabilities of the case or intrinsic infirmities appearing in the evidence. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry

under Section 202 of the Code of Criminal Procedure which culminate into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

- (1) where the allegations made in complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;*
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;*
- (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
- (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.*

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

- 10. In view of the aforesaid reasons as well as the settled law cited, this Court finds that the learned revisional Court correctly directed the learned trial Court to pass a fresh order.
- 11. Consequently, the present petition is dismissed.

(HARPREET SINGH BRAR)
JUDGE

05.04.2024
Ajay Goswami

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether reportable:</i>	<i>Yes/No</i>