

**202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Neutral Citation No. **2024:PHHC:028072**
CRM-M-16751-2018
Date of Decision: February 28, 2024

Harpreet Singh and others ...Petitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. S.S. Swaich, Advocate for the petitioners.

Mr. Amandeep Singh, DAG, Punjab.

Mr. V.K. Kaushal, Advocate for respondent No.1.

DEEPAK GUPTA, J.(Oral)

By way of order dated 14.12.2017 (Annexure P-2) passed in a criminal complaint No.103 of 2016, titled as “***Shamsher Singh v. Harpreet Singh Sarpnach***”, petitioners have been summoned by the Court of learned Judicial Magistrate 1st Class, Rupnagar, to face prosecution under Section 500 and 120-B of IPC.

2. Learned counsel for the petitioners has drawn attention towards the impugned order, so as to contend that there is only the reiteration of the allegations made in the complaint and reference of the statements of the witnesses recorded during preliminary evidence and then it is mentioned by the Trial Court that the entire evidence provides sufficient grounds to proceed against the accused for commission of offences under Section 500 and 120-B of IPC.

3. Learned counsel for the petitioners contends that summoning an accused in a criminal complaint is a serious matter and that Court is required to apply its mind to the facts of the case before passing a

summoning order in order see the existence of a *prima facie* case on the basis of allegations made in the complaint and as to whether those allegations are supported by satisfactory evidence.

4. Learned counsel has referred to “**M/s. GHCL Employees Stock Option Trust v. M/s. India Infoline Limited**” 2013(2) R.C.R. (Criminal) 519, wherein it was held by Hon’ble Supreme Court as under:-

“Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.”

5. Learned counsel for the petitioners has drawn attention towards the impugned order dated 14.12.2017 (Annexure P-2), wherein after referring to the contents of the complaint and the evidence produced by the complainant to support those allegations, it has been mentioned by learned Judicial Magistrate 1st Class, Rupnagar as under:-

“ ----- entire evidence led by the complainant provides sufficient grounds to proceed against the accused for commission of offence punishable under Sections 500 and 120-B of the IPC.”

After making aforesaid observations, direction was given to issue process against the accused-petitioners.

6. Learned counsel for the petitioners contends that in **M/s. GHCL Employees Stock Option Trust**’s case (*supra*) before the

- 3 -

Hon'ble Supreme Court, a similar order had been passed by the Magistrate, which was set aside, inasmuch as the Trial Court had not given its reasons regarding its satisfaction to the existence of a *prima facie* case against the accused to be summoned. Learned counsel contends further that in view of the said legal position, the impugned order deserves to be set aside.

7. Learned counsel for respondent No.2 - complainant could not refute the aforesaid contentions.

8. After going through the impugned summoning order (Annexure P-2) and the case law as cited by learned counsel for the petitioners, I concur with the submissions of learned counsel for the petitioners.

9. No reasons have been disclosed by learned Magistrate regarding the existence of a *prima facie* case on the basis of allegations made in the complaint and the preliminary evidence produced in support thereof. It shows a complete non-application of mind on the part of the Magistrate regarding his satisfaction in respect of existence of a *prima facie* case. As such, the impugned order dated 14.12.2017 is hereby set aside. The matter is remanded back to the Court of learned Judicial Magistrate 1st Class, Rupnagar with direction to pass a fresh order by specifying the reasons for summoning the petitioners.

Disposed of.

February 28, 2024

sarita

(DEEPAK GUPTA)
JUDGE

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