



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

CRM-M-21819-2015 (O&M)

Reserved on: 24.07.2024

Pronounced On: 29.07.2024

Manohar Shukla

....Petitioner

Versus

Arti

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjay Kaushal, Sr. Advocate with
Ms. Pawelpreet Kaur, Advocate
for the petitioner.

Mr. Jasbir Singh Ahlawat, Advocate
For the respondent.

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Section 482 Cr.P.C. seeking quashing of Criminal Complaint No. RT08/06.08.2013/27.01.2014 filed by the respondent under Sections 228-A, 120-B, 34 of IPC pending in the Court of Chief Judicial Magistrate, SAS Nagar, Mohali (Annexure P-1) as well as the order dated 04.04.2015 passed by learned Additional Sessions Judge, SAS Nagar, Mohali (Annexure P-7).

2. Compendiously, the facts are that the respondent filed the Criminal Complaint (supra), wherein, it was alleged by her that she is a rape victim and an FIR bearing No.19 dated 11.03.2013 was also registered on her behest under Sections 376, 419, 420 of IPC read with Sections 66, 66D of Information & Technology Act against one Amit Gadhoke at Police Station-Phase XI, Mohali. In the present case, the petitioner is a reporter for a magazine namely 'Manohar Kahania' who has been accused by the respondent of floating her story pertaining to the abovementioned FIR along with her photograph to the accused



magazine for printing and publishing the same in May 2013 edition, whereas, other co-accused include the Editor, Assistant Editor, Publisher etc. Allegedly, the story of the respondent-complainant continued from page no.8 to 10, 12, 14, 16 and 18 which was published by the accused along with her coloured photograph on page no.12 of the aforesaid magazine. After publishing the same, the accused persons circulated the aforesaid magazine in open market for sale to the general public all over India. This alleged act caused great distress to the respondent as it lowered her reputation in the society. Aggrieved by the conduct of the accused persons, the respondent served a legal notice dated 22.07.2013 upon them through her counsel which duly received by each of them and one of the accused also sent a reply dated 29.07.2013 through registered post to the counsel of the complainant. The respondent also approached the concerned police but no heed was paid to her case. Thereafter, the respondent filed the criminal complaint(supra) against the accused, wherein, after recording the preliminary evidence of the complainant and calling for a report under Section 202 Cr.P.C. dated 01.10.2014 from S.H.O. of Police Station- Phase XI, Mohali, the learned trial Court vide order dated 07.11.2014 observed that no offence under Sections 228-A read with Section 120, 34 of IPC was found to be made out and no ground to summon the accused was found since the name of the petitioner was changed in the story and the photograph published was also blurred and hence, the complaint filed by the respondent was dismissed.

3. Affronted by the same, the respondent-complainant preferred a revision petition against the order of learned trial Court, wherein, the learned revisional Court while recording that although her name was changed in the published story but the photograph published by the accused was not blurred



enough to conceal her identity, proceeded to set aside the order of the learned trial Court with a direction to make further inquiry and pass appropriate orders in accordance with the law.

4. Now, the present petitioner who is alleged to have provided the story and the photograph of the respondent to the abovesaid magazine has approached this Court with a prayer to invoke the inherent jurisdiction for quashing the criminal complaint(supra).

5. Learned senior counsel representing the petitioner *inter alia* contends that the petitioner cannot be held liable under Section 228A IPC because he only provided the story to the accused magazine and it was completely a prerogative of the co-accused publishers to vet the story and take necessary precautions. It is further submitted that the petitioner is a national award winning freelance journalist with 50 years of experience in his field of work. Further, the petitioner only provided the story to accused magazine and not the photograph and furthermore, name of the respondent has been changed in the published story. He further contends that even in the report sought from the concerned police by the learned Chief Judicial Magistrate, SAS Nagar, Mohali under Section 202 Cr.P.C., the petitioner along with other co-accused was found to be innocent and therefore, no grounds to summon them were found. The learned Additional Sessions Judge, SAS Nagar, Mohali has erred in recording that the photograph in question was not blurred enough when no such thing was found in the inquiry made by the police or the preliminary evidence of the complainant.

6. Learned counsel for the respondent contends that she being a lawyer, is well versed with the law. Perusal of page no.66 of the paper-book clearly shows that the face/identity of the victim can easily be made out in the



photograph even from a black and white photocopy of the published article, whereas, the actual article carried a coloured rendition of the same. As the bare provision of Section 228A IPC clearly says that not just the act of revealing the name but any material qua the identity of a rape victim is culpable and hence the petitioner, being the originator of the story and part of the print medium, is duly responsible for the same. He further argues that the petitioner has no locus standi to approach this Court at such a nascent stage of the trial since he has not yet been summoned by the learned Court below.

7. I have heard the learned counsel for the parties and perused the record of the case. Before evaluating the submissions put forth by the learned Senior counsel appearing for the petitioner on merit, it is pertinent to discuss if the petitioner has any legs to stand before this Court at the current stage of the case. The learned Chief Judicial Magistrate, SAS Nagar, Mohali proceeded in accordance with Section 202 Cr.P.C. and chose to enquire the matter through the concerned police. Subsequently, the complaint filed by the respondent was dismissed after recording her preliminary evidence and at no stage process was issued against the petitioner or the co-accused persons in accordance with Section 204 Cr.P.C. Moreover, the learned revisional Court only directed the learned trial Court to make further inquiry and pass an appropriate order in accordance with law. While deciding the matter afresh, the learned trial Court may decide the matter as it deems appropriate and the petitioner, in no way, can predict the order beforehand. Since the position of the case was not modified, under these circumstances the petitioner never attained the status of an accused apropos the case at hand. No order prejudicial to the petitioner was passed and therefore, his rights were never affected in terms of the Criminal Code.

Pertinently, the Hon'ble Supreme Court in *Prabha Mathur & Anr. vs Pramod*



Aggarwal and Ors., 2008(4) R.C.R.(Crl.) 636 made the following observations while speaking through Justice C.K. Thakker: -

*“16. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be allowed. It is no doubt true, as held by this Court in **Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors., (1976) 3 SCC 736** and reiterated in several other cases that the accused has no locus standi at the stage of investigation and he cannot insist for hearing before process is issued against him. It was also held in **Chandru Deo Singh v. Prokash Chandra Bose & Anr., (1964)1 SCR 639** and in **Shashi Jena & Ors. v. Khadal Swain & Anr., 2004(3) RCR (Criminal) 338 : 2004(3) Apex Criminal 215 : (2004)4 SCC 236** that at the most, an accused may remain present with a view to be informed as to what is going on and nothing more. It is equally correct that if a person has no locus standi or right of hearing, such right does not accrue in his favour by an indirect process.”*

8. Similarly, a Full Bench of the Allahabad High Court, while speaking through Justice Amar Saran, made the following perspicuous observations in **Father Thomas vs. State of U.P. and Another, 2011(3) R.C.R. (Crl.) 160** which are quite relevant to the case at hand: -

*“10. In **Smt. Nagawwa v. V.S. Konjalgi, AIR 1976(13) ACC 225 (SC)**, **V.V. Panchal v. D.D. Ghadigaonkar, AIR 1961 Supreme Court 1**, **Chandra Deo Singh v. Prakash Chandra Bose, AIR 1963 Supreme Court 1430 : 1963(2) Cr.L.J. 397**, **Mansukh Lal V. Chauhan v. State of Gujarat, 1997(35) ACC 501 (SC)** and **C.B.I. v. V.K. Sahgal & Others, 1999(4) RCR (Criminal) 615 : JT 1999(8) SC 170** it has been held that the scope of enquiry under section [202](#) of the Code is extremely limited, and it is only meant for adjudging whether prima facie on the basis of the intrinsic reliability of the material placed by the complainant, a case for issuing process against the accused was made out. The accused at this stage has a right only to remain personally present or through his agent and to be informed about what is going on, but he has no right to participate in the proceedings. At this stage the defence of the accused is not to be considered. Sufficiency of the material for conviction is beyond the scope of an inquiry under section [202](#) of the Code as the same is a matter for consideration during trial. The accused is only called upon to answer the allegations against him after process has been issued against him. The legislature had deliberately not provided for an accused to intervene at this stage as that would frustrate the object of the inquiry.*



11. In **Pratap v. State of U.P., 1991(28) ACC 422**, it has been observed that merely because process has been issued against a person, it cannot be said that a decision adversely affecting his rights has been taken, as he has merely been asked to face trial in a Court of law. Therefore no principle of natural justice is infringed if a Magistrate issues process against a person without first affording him an opportunity of hearing. The Code does not contemplate holding two trials, one before the issue of process and the other after the process is issued. The legislature has provided an elaborate procedure for hearing an accused after the trial begins in a Court of law.

12. The same view has also been taken in **S.C. Mishra v. State, 2001(1) ACC 342**, and **Anil Kumar v. State of U.P., 1991 (28) ACC 422**. The aforesaid views in Pratap (supra) and the other above-mentioned authorities have been approved by a Full Bench of this Court in **Ranjeet Singh v. State of U.P., 2000(3) RCR (Criminal) 355 : 2000(40) ACC 342 (HC-FB)**.

13. The thrust of the argument was that if after cognizance when the Court decides to conduct an inquiry under section [200](#) or [202](#) Criminal Procedure Code, no right of hearing, beyond the right of the accused to be present personally or through counsel is permitted, where would the question arise of the accused having a right to be heard when an order by the Magistrate only directing the police to investigate a cognizable offence in exercise of powers under section [156\(3\)](#) Criminal Procedure Code was passed at the pre-cognizance stage.

14. In **Union of India v. W.N. Chaddha, 1993 CriLJ 859 (SC)** it has been held in paragraph 93 :

".....More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section [173\(2\)](#) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section [204](#) of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding the said offence is triable by a Magistrate or triable exclusively by the Court of Session, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section [202](#) of the Code, the accused may Attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances."



15. *Illustrative circumstances where the accused has been given a right of hearing during trial are spelt out in paragraphs 93 and 94 in W.N. Chaddha (supra). Thus under Section 227 of the Code dealing with discharge of an accused in a trial before a Court of Session under Chap. XVIII, the accused is to be heard and permitted to make his submissions before the stage of framing the charges. Under Section 228 of the Code, the trial Judge has to consider not only the records of the case and documents submitted with it, but also the submissions of the accused and the prosecution made under Section 227. Similarly, under Section 239 falling under Chapter XIX dealing with the trial of warrant cases, the Magistrate may give an opportunity to the prosecution and the accused of being heard and to discharge the accused for reasons to be recorded in case the Magistrate considers the charge against the accused to be groundless. Section 240 of the Code dealing with framing of charges also requires examination of an accused under Section 239 before the charge is framed. Under Section 235(2), in a trial before a Court of Sessions and under Section 248(2) of the trial of warrant cases, the accused as a matter of right, is to be given an opportunity of being heard. On the other hand the provisions relating to investigation under Chapter XII of the Code do not confer any right of prior notice and hearing to the accused.*

16. *According to the decision in W.N. Chaddha the prospective accused can also not get any advantage of the principle of Audi Alteram Partem at the stage of investigation as no substantive rights of the accused who has not yet been summoned are involved. Moreover the accused will have all rights to be heard and to raise his defence pleas during the course of the trial.”*

9. Furthermore, it is trite law that this Court cannot delve into disputed questions of facts at this stage while exercising its inherent powers under Section 482 of the Code as the same can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C is obliged to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to



adduce evidence to substantiate the same. A two Judge bench of the Hon'ble Supreme Court in the **Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513**, speaking through Justice Hrishikesh Roy, observed as under:

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

10. Quite recently, a three-Judge Bench of the Hon'ble Supreme in **Priyanka Jaiswal vs The State of Jharkhand and Others, 2024 All SCR(Crl.) 1064**, speaking through Justice Aravind Kumar, made the following observations: -

*“13. We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extraordinary jurisdiction can neither undertake to conduct a mini trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of **Akhil Sharda 2022 SCC Online SC 820** held to the following effect:*

“28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., 1973 it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C., 1973 As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C., 1973 jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., 1973 the High Court cannot get into appreciation of evidence of the particular case being considered.””

11. As an upshot of the above, this Court finds no force in the arguments advanced by the learned senior counsel at this stage. Hence, the present petition is hereby dismissed.

12. Pending miscellaneous applications, if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

29.07.2024
Neha

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