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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-16809-2024
Date of decision : 08.04.2024

Baldev Singh Petitioner

versus

Swinder Singh Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ankur Mehta, Advocate and
Mr. A.S. Manaise, Advocate
for the petitioner.

PANKAJ JAIN, J. (Oral)

1. Petitioner is aggrieved of order dated 03.02.2024 passed by Additional Sessions Judge, Gurdaspur.
2. Thereafter, revision preferred by the petitioner and the summoning order dated 23.07.2019 stands affirmed. Complaint was filed against the petitioner alongwith three other co-accused. The allegations read as under:-

“3. That, on 24.06.2016, the complainant along with his family was present in his house. At about 3 PM, he was taking rest. Then all of sudden accused Baldev Singh armed with datar, accused Navjot Singh armed with datar, accused No.3 Mintu armed with baseball bat and accused No.4 Smt. Janko empty handed trespassed in the house of complainant by forcibly opening the outer gate of the house. Immediately after entering into the house, accused No.4 Smt. Janko raised lalkara, "Fad Lavo Isnu Ate Sade Te Gali Wichon Beri Wadan and

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Malba Chukan Layi Reportan Karan Da Maza Das Deo" Excited from this lalkara all the accused started damaging the household articles and causing damage to the property. The accused persons openly proclaimed that whosoever may come forward will be done to death and brandished their weapons in air. The accused persons also beaten the complainant with kick and fist blows. The accused persons caused damage to scooter of the complainant which was parked inside the house they also broke down the doors and windows of the house and also broke down the utensils etc. All the accused also given filthy abuses to the complainant, his wife and daughters-in-law and also threatened to kill them. The complainant, his wife and her daughters-in-law raised raula, and on hearing raula, number of persons who reached the spot, and seen the occurrence with their eyes and saved the complainant, his wife and daughters. Thereafter, the complainant made phone call to police on number 100 and also to P.S. Ghuman Kalan and Police Control Room Gurdaspur. After sometime the police officials visited the spot and recorded statement of complainant."

3. Trial Court after examining the preliminary evidence, summoned the accused(s) including the petitioner to face trial under Sections 452, 427, 506 and 34 of IPC. The same was assailed by the petitioner in revision. Additional Sessions Judge, Gurdaspur vide order dated 01.11.2021 allowed the same. The matter travelled before this Court in CRM-M-52609-2021 at the behest of the complainant. The order passed by the revisional Court was set aside holding as under:-

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“xx xx xx

7. Having heard rival contentions of the parties and after perusing records of the case, in the considered opinion of this Court, the only reason assigned by the Revisional Court for exercising jurisdiction under Section 397 Cr.P.C. is that the Trial Court ignored the police report without assigning any reason and failed to give justifiable grounds.

8. The aforesaid finding recorded by the Revisional Court is in the teeth of law laid down by Apex Court in **Gangadhar Janardan Mhatre vs State of Maharashtra (2004) 7 SCC 768** wherein it was held as under:-

“9....The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also...”

9. Thus, it is clear that at the time of issuing of process under Section 204 Cr.P.C. the Trial Court is required to apply its mind to the preliminary evidence and application of mind necessarily should not be in line with the inquiry conducted by the police. Otherwise also, it is not a case where FIR was registered and thus Section 210 Cr.P.C. ought to have been resorted.

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10. In view of above, the impugned order passed by the Revisional Court is found to be unsustainable in the eyes of law and is hereby ordered to be set aside.

11. Parties are directed to appear before the Revisional Court on 12.01.2024. The Revisional Court shall decide the revision afresh after applying its mind to the preliminary evidence and the pleas being raised by the parties in accordance with law. Keeping in view the fact that present revision is pending before this Court since 2021, this Court is quite sanguine that Revisional Court shall decide the revision within a period of 3 months from the date the parties appear before the Revisional Court.”

4. Pursuant to the aforesaid order, now fresh order has been passed by the revisional Court which is subject matter of challenge of the present petition. Revisional Court while allowing the revision observed as under:-

“XX XX XX

Therefore, this Court finds that present revision petition is devoid of law and merits and the same is liable to be dismissed for the reasons mentioned below:-

i. At the stage of section 203/204 Cr.P.C. the sifting and weighing of evidence is not permissible. Pertinently, under Section 204 Cr.P.C. process can be issued directly against the accused persons on the sole basis of statement(s) and evidence recorded under Section 200 Cr.P.C. when a prima facie offence is made out. Short and limited questions to be considered at the stage of

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203/204 Cr.P.C, as to whether there is sufficient ground for proceedings. As far as the arguments of the learned counsel for the revisionist that there is delay in filing the complaint and despite the accused persons allegedly armed with deadly weapons, no corresponding injury to the proportionate to the mode and manner in which occurrence has been shown, is there on the person of complainant or any of his family members. As far as filing complaint with delay is concerned, it is suffice to mention here that the question of limitation is purely a mix question of law and facts and at the stage of section 204 Cr.P.C. if the evidence is scrutinized then it would amount to pre-trial of the case which is not permissible at this stage. At the stage of summoning, the statements are only in the form of examination-in-chief before the Court of Magistrate without they being tested on cross-examination. From the perusal of the statements, it transpires that learned Magistrate has formed its opinion regarding summoning of the accused persons after learned Court found sufficient material on file.

ii. This Court has independently gone through the complaint as well as pre summoning evidence brought on record by the complainant. CW-1 deposed on oath before the Court of learned Magistrate during pre-summoning evidence that on dated 24.06.2016, Baldev Singh, Navjot Singh and Mintu and Janko wife of Baldev Singh suddenly came in their house at about 3:00 PM. The accused Baldev Singh was armed

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with datar and accused Navjot Singh was also armed with datar, Mintu armed with baseball bat and Janko empty handed. He deposed that all the trespassers entered into their house after pushing the gate of the house. Janko raised lalkara and exhorted that caught hold of the complainant and he be taught lesson for filing complaint against them. He deposed that all the accused abused him and his family members and damaged house equipment, door, window and gave kick blows to scooter. He further deposed that accused hit door with datar and baseball bat and he called police Heal Quarter Control Room at No.100 and thereafter, the police came and recorded his statement but police have not taken any action. The evidence of the complainant while appearing as CW-1 is in consonance with the accusation levelled in the criminal complaint. Further the testimony of CW-1 was corroborated by CW-2- Balwinder Kaur wife of the complainant. Thereafter, the complainant examined PHC Parwinder Singh, who at the relevant point of time was posted at Police Control Room and deposed that on 24.06.2016 at about 3:20 PM he received call from Swinder Singh that his neighbourer fought with him and his family members and even broken his house. He deposed that he conveyed the message to Police Station Ghuman Kalan. Leaned Magistrate also called police report and police report dated 23.07.2019 available on file. Though, the police have not taken any action, rather filed the complaint for lack of evidence.

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iii. From the police report submitted before the learned laqa Magistrate, it emerges out that the complainant on 24.06.2016 immediately reported the matter to the police. Also, the evidence of PW-3 PHC Parwinder Singh points out that matter was immediately reported. Since the substance of the information reported by the complainant to the police falls under cognizable offence and as such, the appreciation of evidence at the level of police was not warranted.

8. Thus, as a sequel to the above discussions, this Court has come to the conclusion that there is no illegality or impropriety in the impugned order summoning the accused/revisionist and there is sufficient ground for proceedings against the accused. Whether the evidence is adequate for supporting the conviction can be determined only during the course of trial and not at the stage of inquiry.”

5. Counsel for the petitioner while assailing the order submits that apart from the general allegations levelled in para No.3 of the complaint (supra), there is no overt act attributed to the petitioner. He submits that the version of the complainant looks improbable for the reason that the parties were well known to each other and despite that the complainant could not attribute any injury to any of the accused. Thus, the present case being false implication of the petitioner amounts to abuse of process of law and this Court must exercise jurisdiction under Section 482 of the Code to quash the impugned order.

6. I have heard counsel for the petitioner and have gone

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through the records of the case.

7. Revisional Court is right in holding that at the stage of issuance of process under Section 204 of the Code, trial Court is not required to appreciate the evidence to find whether the same are sufficient to convict the accused rather the test is *prima face* case to proceed against the accused.

8. From the perusal of the complaint, it is evident that the complaint cannot be thrown holding that the same is bereft of even the basic allegations for this Court to exercise jurisdiction under Section 482 of the Code. The complainant having alleged *prima facie* case is definitely within his right to lead evidence to bring home guilt of each of the accused(s).

9. In view of above, this Court does not find any reason to interfere and the present petition is hereby dismissed.

(PANKAJ JAIN)
JUDGE

08.04.2024
Dinesh

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