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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 22.05.2024

1.

CRM-M-22181-2021

Rajwinder Singh @ Raju @ Rajpal

..... Petitioner

versus

State of Punjab and another

..... Respondents
2.

CRM-M-29564-2021

Parveen Kumar

..... Petitioner

versus

Charan Singh

..... Respondent
3.

CRM-M-1026-2022

Manjinderpal Singh

..... Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sunpreet Singh, Advocate for
 Mr. P.S. Dhaliwal, Advocate
 for the petitioner in CRM-M-22181-2021.

 Mr. P.S. Ahluwalia, Advocate
 for the petitioner in CRM-M-29564-2021.

 Mr. A.S. Shergill, Advocate
 for Mr. Navjot Singh, Advocate
 for the petitioner in CRM-M-1026-2022.

 Mr. Tarun Aggarwal, Sr. DAG, Punjab.

 Mr. Tejinder Pal Singh, Advocate
 for respondent No.2.

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**PANKAJ JAIN, J. (Oral)**

1. These three petitions are directed against common order passed by the trial Court whereby the petitioners have been summoned to face trial in complaint case for offences punishable under Sections 302 read with Sections 34, 201, 217, 218 and 120-B of IPC.

2. FIR was registered against Constable Rajwinder Singh @ Raju, S.P. Maninder Singh and Parveen Kumar on the basis of information supplied by complainant Charan Singh son of Man Singh regarding murder of his son Gurmeet Singh at his clinic. FIR came into being on the directions issued by this Court in Criminal Miscellaneous No. 19634-M of 1999. Report under Section 173 Cr.P.C. was filed after investigation recommending cancellation of the case as it was concluded that no sound evidence was found against the accused. Cancellation report was presented before the Court on 08.07.2003. The complainant objected and he was granted time to file detailed objections. Vide order dated 13.01.2004, Court allowed him to lead evidence. After analyzing the evidence, CJM, Sangrur vide order dated 27.05.2024 held that no *prima facie* case is made out against the accused and accepted the cancellation report submitted by the police. However, liberty was granted to the complainant to file criminal complaint. The order was assailed before this Court in CRR No.170 of 2006. However, the same was dismissed for want of prosecution as the complainant failed to take any steps to furnish correct address of the accused.

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3. On 08.03.2010, the respondent-complainant filed criminal complaint against Rajwinder Singh @ Raju, Maninder Singh, Parveen Kumar, ASI Pritam Singh and Constable Sajjan Singh. Magistrate after appreciating the preliminary evidence found that there were sufficient grounds to proceed against the accused and thus summoned them to face trial under Sections 302, 34, 201, 217, 218 and 120-B of IPC. The said order was challenged by Parveen Sharma before this Court by way of CRR No.1307 of 2021. This Court allowed the revision vide order dated 30.08.2013 holding that as per settled law, the object of enquiry contemplated under Section 203 of the Code of Criminal Procedure is to ascertain truth for falsehood of the complaint and a Magistrate holding the enquiry, has to do the same with reference to the intrinsic quality of the statements made during enquiry. The Magistrate in the present case did not bother to examine acceptance of cancellation report affirmed by this Court to test the quality of the statements of the witnesses produced during preliminary enquiry, despite the fact that the same were exhibited and tendered in evidence by the complainant himself. This Court held that the Magistrate ought not have ignored the documents produced on record and thus, quashed the summoning order remitting the matter back to the Court of Additional Chief Judicial Magistrate, Sangrur for decision afresh in accordance with law.

4. On re-examination of whole of the evidence after the matter was remitted back, JMJC, Sangrur dismissed the complaint under Section 203 of the procedural code holding that the complainant failed to bring to the notice of the Court anything which was overlooked by

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CJM while accepting the cancellation report vide order dated 17.12.2013. The respondent-complainant approached this Court by way of CRM No.A-743-MA of 2014 seeking leave to appeal against the order dismissing the complaint. The same was withdrawn with liberty to file revision petition before the revisional Court vide order dated 05.05.2016 placed on record as Annexure P-5.

5. Revision was filed before the Sessions Judge, Sangrur impugning order dated 17.12.2013. Revisional Court vide order dated 04.08.2018 allowed the revision remitting back the matter before the trial Court to be decided afresh holding that the trial Court while passing the impugned order failed to appreciate the preliminary evidence properly and erred in dismissing the complaint. Revisional Court set aside the order of dismissal of complaint and remitted the matter back to the trial Court to pass summoning order afresh after taking into consideration entire evidence on record. After remission, ACJM issued process against the petitioners and summoned them to face trial in complaint qua offences punishable under Sections 302, 34, 201, 217, 218 and 120-B of IPC.

6. While assailing the impugned order passed by the Courts below, counsel for the petitioners submits that it is evident from the record that the cancellation report was accepted only after the respondent-complainant was allowed to lead evidence. He led evidence. The complainant as well as two witnesses namely Chand Singh and Manjit Singh appeared as CW-2 and CW-3 respectively on 26.04.2004 and after considering their version, the cancellation report

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was accepted. No new evidence was considered while issuing process by way of impugned order which thus, amounts to reviewing of the earlier order without there being any fresh evidence.

7. Counsel representing the petitioners has further drawn the attention of this Court to the order passed by the revisional Court which led to the passing of the present order to submit that the revisional Court erred in directing the trial Court to pass fresh summoning order. He submits that as per settled law, no such direction can be given by the Superior Court. Instead, the revisional Court ought to have directed the trial Court to pass fresh order. He further submits that once there was a direction issued by this Court in CRR No.1307 of 2012, the trial Court ought to have weighed the preliminary evidence brought on record by the complainant vis-a-vis the evidence considered by the CJM while accepting the cancellation report to opine on the intrinsic quality of the statements. The same being missing, the impugned order is in teeth of remand orders passed by this Court.

8. Counsel for the petitioner in Parveen Kumar's case has further submitted that petitioner Parveen Kumar was arraigned as an accused for the time first time after 05 years of the alleged occurrence. He was not named in the FIR and thus, the proceedings against him are nothing, but abuse of process of law.

9. *Per contra*, counsel for the respondent submits that at the stage of issuance of process, the Court is not required to opine on the chances of conviction of the accused. The test is whether there is evidence to proceed against the accused or not. Trial Court having

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found there being sufficient evidence to proceed against the petitioners has rightly issued process, summoning them to face trial for offences punishable under Sections 302, 34, 201, 217, 218 and 120-B of IPC. It being murder of young son of the complainant, the prosecution cannot be foreclosed at this initial stage.

10. I have heard rival contentions of counsel representing the parties and have carefully gone through the records of the case.

11. The case has chequered history and is shuttling between various Courts without making any progress. Facts are not much in dispute. The question is two fold:-

(i) Whether the revisional Court ought to have directed the trial Court to pass fresh summoning order as is being argued by the counsel for the petitioners?

(ii) Whether the direction issued by this Court while remanding the case back having complied with by the Magistrate while passing the impugned order?

12. Coming on the first issue, there cannot be any dispute that once the revisional Court was remitting back the matter to the Magistrate to decide afresh, it would have done better without issuing the directions to 'pass fresh summoning order'. Revisional Court indeed exceeded its power in directing the Magistrate to pass fresh summoning order. Instead of this, it should have directed the Magistrate to pass order afresh by considering evidence on record in light of the directions issued by High Court vide order dated 30.08.2013 passed in CRR No.1307 of 2012. Regarding issue no.(ii),

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this Court in CRR No.1307 of 2012 while reminding the matter back observed as under:-

“A perusal of what has been held by the Hon'ble Supreme Court of India makes it evident that the object of the enquiry is to ascertain truth or falsehood of the complaint but the Magistrate holding the enquiry has to do this with reference to the intrinsic quality of the statements made during enquiry.

In the case in hand, the Judicial Magistrate knowing fully well that after completion of investigation in the case, a cancellation report was submitted which was accepted by the Court after getting objections from the complainant and the order of acceptance of cancellation report was affirmed by this Court, did not bother to examine those proceedings in order to judge the intrinsic quality of statements of witnesses produced during preliminary enquiry.

In ***Kuldeep Raj Mahajan vs. Hukam Chand, 2008 (1) RCR 370*** this Court examined an issue with regard to the obligation of the Court passing summoning order in a private complaint, it was held as quoted hereinbelow:-

“In the aforesaid context, learned counsel for the petitioner submitted that inspite of having called report from the Investigating Officer vide order dated 1.9.2000 (Annexure P-18), the learned Magistrate, while passing the impugned summoning order dated 19.9.2002, did not take into consideration the

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cancellation/investigation report of the police. Perusal of impugned summoning order (Annexure P-2) reveals that there is no reference at all to the investigation report/cancellation report of the police in the summoning order. Without considering the investigation report/cancellation report of the police, the impugned summoning order could not have been legally passed by the learned Magistrate.....”

The Judicial Magistrate, for the reasons best known ignored the documents produced on record and passed a sketchy order to hold that there are sufficient grounds to proceed against the accused particularly in the circumstances that five persons were ordered to be summoned for a heinous offence of murder under Section 302 IPC. As the Judicial Magistrate did not consider the cancellation report as well as the detailed order passed by the Court accepting the said cancellation report, the summoning order passed on 26.3.2012 cannot be allowed to sustain.

In view of what has been discussed hereinabove, the petition is allowed. The impugned order dated 26.3.2012 is set aside and the matter is remitted to the Court of Additional Chief Judicial Magistrate, Sangrur for decision afresh in accordance with law.”

13. It is evident from the record that the complainant himself and rightly so has exhibited the order of acceptance of the cancellation report as well as the evidence led by the complainant before such

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acceptance in the complaint case. The Court below was directed by this Court to advert to the earlier proceedings with respect to the cancellation report and acceptance thereof to ascertain truth or falsehood of the complaint as he is under obligation to hold enquiry. From bare perusal of the impugned order passed by the Magistrate, it is evident that while passing the same, the same mistake has been repeated.

14. In view of above, this Court finds that the impugned order being in teeth of the order of remand passed by this Court in CRR No.1307 of 2012 cannot be sustained and is hereby set aside. The matter is remitted back to the Magistrate to pass order afresh strictly in accordance with the directions issued by this Court in CRR No.1307 of 2012. Trial Court is directed to pass order afresh within a period of 03 months from the date of receipt of certified copy of this order.

15. Disposed off, accordingly.

16. A photocopy of this order be placed on the files of other connected cases.

(PANKAJ JAIN)
JUDGE

22.05.2024

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No