

248 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-26961-2023 (O&M)

Date of Decision: 09.01.2024

RAJINDER CHAUHAN

...Petitioner

V/S

TRILOK CHAND

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dalip Kumar, Tuteja, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the criminal complaint No. 489 dated 25.01.2012, filed under Sections 323, 504, 458, 427, 395, 148 and 149 read with Section 120-B of Indian Penal Code pending in the Court of learned Judicial Magistrate Ist Class, Rohtak (Annexure P-4), order of summoning dated 20.07.2012 (Annexure P-5) and the order in revision dated 29.10.2015 (Annexure P-6) and all consequential proceedings arising therefrom.

2. Brief facts of the case as set up in the complaint filed by the respondent- Trilok Chand are that he is working on a shop i.e. Om Medical Agencies and the brother of complainant - Suresh Kumar Gupta, is the sole proprietor of the shop who has taken the Shop No.8 (earmarked as 'Chemist Shop') on licence in the Shopping Complex of Post Graduate Institute of Medical Sciences, Rohtak (hereinafter to be referred as 'the PGIMS, Rohtak'). The complainant's brother Suresh Kumar Gupta had filed a civil suit before the Civil Court at Rohtak praying for a decree of injunction against the authorities of PGIMS, Rohtak not to evict him. In para 6 of the complaint, it is stated that Suresh Kumar Gupta, the proprietor of M/s. Om

Medical Agencies, lost the case and vide order dated 28.04.2011, the Civil Court dismissed the application under Order 39 Rules 1 and 2 CPC. It is further stated that Suresh Kumar Gupta had filed a civil appeal which was dismissed by the Additional District Judge on 18.01.2012. It is further stated in the complaint that on 19.01.2011, accused Nos. 1 to 5 (the accused No.7 being Director of the PGIMS, Rohtak) came to the shop and enquired about Suresh Kumar Gupta and directed the complainant to vacate the shop. Upon asking, they informed that accused No.6 the Vice Chancellor of PGIMS, Rohtak had directed to get the shop vacated. Upon this accused No.3 made a telephonic call to the accused No.7 and he came there along with 30-40 persons and removed the medicines and other goods lying in the shop, on a tractor. Thereafter, the complainant approached accused No.6 i.e. the Vice Chancellor of PGIMS, Rohtak, who refused to entertain his complaint and thereafter, the present complaint was filed with the allegations that all the accused persons have taken away medicines worth Rs.80/90 lacs along with other medical equipments and therefore, necessary action be taken against them.

2. Learned counsel for the petitioner *inter alia* contends that the complaint (supra) has been instituted by the respondent with an oblique motive to wreak vengeance on the petitioner and other employees of the Post Graduate Institute of Medical Sciences, Rohtak. The complaint has been filed against the Vice-Chancellor, Director, Estate Officer and some other employees. The complaint (supra) has been quashed by this Court in three separate petitions filed under Section 482 of Cr.P.C., details of which are as under:

Petition No.	Name of Parties	Date of Order
CRM-M-39281-2015	Dr. Chand Singh Vs. Trilok Chand	06.11.2019
CRM-M-10938-2020	Sudhir Katyal and Others Vs. Trilok Chand	15.11.2022
CRM-M-8132-2021	Dr. S.S. Sangwan Vs. Trilok Chand	15.11.2022

3. Learned counsel for the petitioner further submits that the case of the petitioner is identical to that of co-accused, who have got relief from this Court in aforementioned cases and in spite of due service effected upon the respondent-complainant, no one has put in appearance on his behalf in two of the petitions mentioned above. Similarly, in spite of service, the respondent-complainant has not come forward to address arguments in the present petition as well.

4. Having heard the learned counsel for the petitioner and after perusing the record, it transpires that the petitioner was working as Estate Officer and under the orders of Vice-Chancellor, a show-cause notice was issued to the brother of the complainant for vacating shop No. 8. On expiry of the period of show cause notice on 27.01.2007, the licence of shop No. 8 was cancelled by the competent authority. Again on 05.07.2017, after cancellation of the allotment of the shop, the proprietor Suresh Kumar Gupta, brother of the complainant was given 15 days time to vacate the shop. However, instead of vacating the shop, Suresh Kumar Gupta approached the Civil Court by filing a suit for injunction. The suit as well as the appeal filed by him has been dismissed by the learned trial Court and the first Appellate Court. Even the Civil Revision No. 4716 of 2009 preferred by the brother of the complainant was dismissed by this Court. Thereafter, in compliance of the order passed by Collector-cum-SDO (Civil), Sub Division Rohtak under the provisions of Haryana Public Premises and Land

(Eviction and Rent Recovery) Act 1972, the possession of the shop was taken with the police help. As such, the petitioner being Estate Officer, has only complied with the directions passed by the competent authority and acted in good faith in discharge of his official duties. As such, before issuance of process under Section 204 of Cr.P.C., sanction under Section 197 of Cr.P.C. was required and in the absence of such sanction, criminal complaint as well as the summoning order are liable to be quashed on this ground alone. The petitioner is a public servant within the meaning of Section 21 of the Indian Penal Code and as per Volume I of the University Calendar, the previous sanction was mandatory for launching prosecution against the petitioner. The mala fide intention on the part of the complainant is apparent on record and the malicious prosecution is launched to wreak vengeance as per para '7' of the judgment titled as **State of Haryana Vs. Ch. Bhajan Lal AIR 1992 SC 604**. The relevant para is reproduced hereinbelow:

“(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

5. In view of the above, the complaint(supra) deserves to be quashed. Moreover, learned trial Court has not considered the facts of the case in the right perspective and passed the impugned summoning order in a mechanical manner and the case of the petitioner is fully covered by the ratio of law laid down in **Mrs. Priyanka Srivastava and another Vs. State of U.P. and others 2015(2) RCR (Criminal) 1034**. The prosecution cannot be launched in a casual manner. Further reliance can be placed on the

judicial precedents of the ratio of law laid down by Hon’ble Supreme Court in case of **General Officer, Commanding Vs. CBI and Another (2012) 6 SCC 228**, wherein it was held as follows:

“Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory, on the part of the executive authority to protect him....If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.”

6. Keeping in view the facts and circumstances of the case and specially the fact that the similarly situated accused have approached this Court and criminal proceedings against them have been quashed vide orders dated 06.11.2019, 15.11.2022 and 15.11.2022 passed in CRM-M-39281-2015, CRM-M-10938-2020 and CRM-M-8132-2021 respectively, the present petition is allowed and the impugned complaint No. 489 dated 25.01.2012 (Annexure P-4), the summoning order dated 20.07.2012 (Annexure P-5) and the order in revision dated 29.10.2015 (Annexure P-6) and all subsequent proceedings arising therefrom are hereby quashed qua the petitioner only.

(HARPREET SINGH BRAR)
JUDGE

09.01.2024
Ajay Goswami

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