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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR-283-2017 (O&M)  
Date of decision: 07.08.2024

Abhishek Dhupper and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vipin Mahajan, Advocate  
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 06.12.2016 passed by learned Additional Sessions Judge, Pathankot, vide which the petitioners have been summoned to face trial under Section 193 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') in the case stemming from FIR No.163 dated 19.11.2014 under Sections 363, 366-A IPC, registered at Police Station Division No.2, Pathankot.
2. Briefly, the facts are that on 12.11.2014, 'A', 14-year-old daughter of the complainant did not return from school. The complainant later found out

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that her daughter 'A' was enticed away by one Prince on the pretext of marriage. It was also found that petitioner No.2, a friend of 'A', had also gone with them. On 19.11.2014, mother of petitioner No.2 got her statement recorded under Section 161 Cr.P.C. (Annexure P-3), wherein she stated that petitioner No.1 and Prince had enticed away petitioner No.2 and 'A' on the pretext of marriage. Petitioner No.2 and 'A' were recovered from house of Lalit Kumar, father of Prince, on 28.11.2014. Their respective statements under Section 164 Cr.P.C. were recorded, wherein they deposed that they had left of their own accord to get married to petitioner No.1 and Prince, respectively.

3. Learned counsel for the petitioners, *inter alia*, submits that in their statements recorded under Section 164 Cr.P.C., neither petitioner No.2 nor 'A' have made any allegation qua sexual assault. Moreover, subsequently, the marriage between petitioner No.1 & 2 was solemnized on 01.08.2010, as reflected from their marriage certificate (Annexure P-10) as well as photographs (Annexure P-9). Any allegations qua sexual assault of 'A' pertain to Prince only. Learned Court below has erred in summoning the petitioners to face the trial, as no specific allegations have been levied against them.

4. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioners along with 'A' and Prince had run away voluntarily. Once petitioner No.2 attained majority, the petitioners got married on 01.08.2010, with the blessings

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of their respective families. However, no allegations have been levied against petitioner No.1 in the present case, either in FIR (*supra*) or in the statements recorded under Section 161 Cr.P.C. or 164 Cr.P.C. In fact, petitioner No.1 was exonerated in the final report presented under Section 173 Cr.P.C. Furthermore, petitioner No.2 was cited as a witness for the prosecution in the instant case. As such, no grounds are made out to summon the petitioners as accused.

5. It is settled law that the Court of Sessions can issue process to summon anyone as an accused on being satisfied that a case is made out to proceed against that person, regardless of whether he has been declared innocent in the final report filed under Section 173(3) of Cr.P.C. In fact, the Court can summon a person as an accused under Section 193 of Cr.P.C., between the two stages i.e. taking cognizance by the Court of Sessions and the framing of charges and proceeding with trial, being the Court of original jurisdiction. In such an event, the Court must be convinced that a *prima facie* case is made out against the said person and his complicity is suspected from the materials available on record.

6. Reverting to the facts of the present case, the petitioners were summoned by learned Court below, however, a perusal of the impugned order dated 06.12.2016 shows that no reasons have been recorded to justify exercise of the power under Section 193 Cr.P.C. As per the final report, petitioner No.1 had been explicitly declared to be innocent pursuant to the investigation

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conducted by the police officials, while petitioner No.2 was cited as a prosecution witness. In such a scenario, learned trial Court ought not to have overlooked this fact and summon the petitioners as a matter of course. Such an order, completely subverts and erodes the very purpose of conducting an investigation. The facts of the present case are squarely covered by the ratio of this Court's judgment in ***Gautam Sharma @ Goutam Sharma vs. State of Punjab and another 2024(3) R.C.R. (Criminal) 382***, wherein this Court held as follows:

*“The Court of Sessions can summon a person as an accused under Section 193 of Cr.P.C., between the two stages i.e. taking cognizance by the Court of Sessions and the framing of charges and proceeding with trial, being the Court of original jurisdiction. In such an event, the Court must be convinced that a prima facie case is made out against the said person and their complicity is suspected from the materials available on record.” (emphasis added)*

7. As per the impugned order, the petitioners were summoned citing active role played by them in facilitating the alleged offence, however, learned trial Court did not pass any finding regarding as to on what basis, the complicity of the petitioners has been established. It is rather curious as to how the investigating agency, on the very same set of allegations and material, decided that no judicial scrutiny is warranted qua petitioner No.1 and decided to place them in column No.2, while the Court, citing the same, mechanically

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summoned him. Moreover, petitioner No.2 had been cited as a witness by the prosecution. It is rather unfathomable as to how one person can be both an accused and a witness in the same instance.

8. Considering the vague and generic nature of the allegations leveled against the petitioners, coupled with the fact that the final report lacked any incriminating material against them, it is clear that learned Court below failed to refer to all the relevant material filed by the investigating agency, while passing the impugned order. The Hon'ble Supreme Court in ***Brijendra Singh Vs. State of Rajasthan, 2017 (3) R.C.R. (Criminal) 374*** has held that if a person is found to be innocent in view of the evidence gathered during investigation and sufficient reasons have been accorded by the investigating agency to substantiate such finding, the trial Court cannot summon that person as an accused in the absence of any fresh inculpatory material brought on record. Moreover, in the case at hand, neither any overt act or specific role has been attributed to the petitioners. As such, this Court is of the considered opinion that the learned Court below has fallen into error by passing the impugned order in a casual manner as it is evident that no *prima facie* case is made out against the petitioners on the basis of material available on record. Reliance in this regard can also be placed on ***Dharam Pal and others Vs. State of Haryana and another, (2014) 13 SCC 9*** and ***Kishun Singh Vs. State of Bihar, 1993(1) SCC 16*** and ***Nisar and others Vs. State of U.P.***

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9. In view of the discussion above, present petition is allowed and the impugned order dated 06.12.2016 passed by learned Additional Sessions Judge, Pathankot, is hereby set aside.

10. All the pending miscellaneous application(s), if any, shall stand disposed of.

[ HARPREET SINGH BRAR ]  
JUDGE

07.08.2024  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No