



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-29469-2024 (O&M)
Date of Decision:-24.7.2024

Amandip Singh and another ... Petitioners
Versus
Mahinder Kaur and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Karan Sachdeva, Advocate and
Mr. Kanav Goyal, Advocate for the petitioners.

GURVINDER SINGH GILL, J. (Oral)

CRM-26503-2024

In view of the reasons mentioned in the application, the same is allowed and the document annexed with the application is taken on record as Annexure P-13 subject to all just exceptions.

CRM-M-29469-2024 (Main Case)

1. The petitioners seek quashing of complaint No.186/2021 dated 10.9.2021 (Annexure P-1) as well as summoning order dated 22.4.2024 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Mansa, whereby the petitioners have been summoned to face trial for having committed offences punishable under Sections 458, 447, 323 and 34 of Indian Penal Code.
2. Respondent No.1 Mahinder Kaur instituted a complaint in the Court of learned Judicial Magistrate 1st Class, Mansa alleging therein that she is an old illiterate lady and is a widow and that she had purchased some land out of



khasra No.667 situated at a short distance from her house, by way of a sale deed and had raised a boundary wall around the said piece of land and had also constructed a shed and *veranda* for cattle apart from a toilet. The complainant alleged that the said property was being used for tethering cattle as well as for placing agricultural and household implements. However, Bhajan Singh wanted to dispossess the complainant and in respect of which complainant had filed a civil suit, wherein a stay order had been granted in her favour. It is further alleged that on 17.8.2019, when the complainant, her daughter-in-law Gurmail Kaur and her grand-children Ramandeep Kaur & Kuldeep Kaur were present in the said land, then at about 10:30 a.m. the accused number 1 to 11 forcibly entered into her property armed with iron rods and spades and they were led by Bhajan Singh and who started demolishing the boundary wall. When the complainant told them that she had a stay order in her favour, then accused No.11 Gurpreet Singh abused her while saying that he does not care about the stay order. It is alleged that Bhajan Singh asked his companions to demolish the construction and to level out the land. When the complainant, her daughter-in-law and grand-children tried to stop them, they were given beatings. Upon hearing their hue and cry, Rajwinder Singh came from the neighbourhood and tried to rescue them. Some other people also attracted to the spot. The police was informed telephonically and when the police personnel came, they took charge of the situation and called the complainant to the police station, where she was made to write an application and was assured that action would be taken. The complainant further alleged therein that when the complainant was present in her house, then her daughter-in-law Gurmail Kaur and her grand-children



were guarding the land in question and Harjit Singh and Gurdeep Singh, sons of the complainant, were away to fields in connection with their work. It is alleged that at about 08:30 p.m. accused No.12 Amandip Singh, who is a police official, and accused No.13 Manpreet Singh forcibly entered into the land while being under influence of liquor and started demolishing the remaining portion of the boundary wall. When complainant's daughter-in-law Gurmail Kaur and grand-children objected, they were given beatings and were illtreated. Rajwinder Singh and other persons were attracted to the spot. The complainant also rushed to the spot upon hearing hue and cry and thereafter the accused ran away while issuing threats. Although the complainant reported the matter to the police, but no action was taken thereupon and rather one FIR was lodged against sons of the complainant and his friends.

3. Learned Trial Court after recording preliminary evidence found sufficient grounds to summon the accused for having committed offences punishable under Sections 458, 447, 323 and 34 of Indian Penal Code.
4. Learned counsel for the petitioners, while assailing the impugned order dated 22.4.2024 (Annexure P-13), submitted that a false complaint has been lodged by the complainant and that the Trial Court erred in summoning the petitioners solely on the basis of oral testimonies of the witnesses without there being any medical evidence to substantiate the allegations.
5. This Court has considered rival submissions addressed before this Court.
6. While a perusal of FIR does disclose the commission of offences as alleged, the complainant in her preliminary evidence apart from stepping into the



witness-box herself had also examined CW - Rajwinder Singh, who is not related to the complainant and also Jasvir Singh. Learned Trial Court upon finding that the witnesses have stated consistently regarding the material aspects of the case, proceeded to summon the accused. It is apposite to bear in mind some of the relevant provisions as per the scheme of the code pertaining to summoning in a complaint case. Sections 200, 203 and 204 of Code of Criminal Procedure, 1973 are reproduced hereinunder for the same of ready reference:

“200. Examination of complainant.—

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

203. Dismissal of complaint.—

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion



that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process.—

- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—
 - (a) a summons-case, he shall issue his summons for the attendance of the accused, or
 - (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.
- (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.
- (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.
- (4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.
- (5) Nothing in this section shall be deemed to affect the provisions of section 87.”

7. Under Section 202 Cr.P.C., the Magistrate has the power to enquire into the case himself or direct an investigation to be made by a police officer or by such person he may think fit, for the purpose of deciding whether there is



sufficient ground for proceeding. Power also vests with the Magistrate to dismiss the complaint if he finds that there is no ground for proceeding with the complaint. However, for such cases, he has to record his reasons for doing so under Section 203 Cr.P.C..

8. Section 204 Cr.P.C. vests the Magistrate with power to summon a person in case, it is of the opinion that there are sufficient grounds for proceeding against the accused. Under Section 244 Cr.P.C., i.e in a case of trial of warrant case instituted on the basis of a private complaint, when an accused appears, the Magistrate is to hear the prosecution and take such evidence as may be produced in support of the prosecution. After taking all the evidence referred to in Section 244 Cr.P.C., the Magistrate has an option under Section 245 Cr.P.C. to discharge the accused, if no case is made out against him on the unrebutted evidence by recording reasons that his conviction would not be warranted. Infact section 245(2) Cr.P.C. empowers Magistrate to discharge the accused at any earlier stage as well. However, where there is ground for presuming that the accused has committed an offence triable under the said Chapter, he will try the accused by framing a charge in writing against the said accused.
9. Hon'ble Supreme Court in Vinod Raghuvanshi v. Ajay Arora and others 2013 (10) SCC 581, while considering the scope of quashing of summoning order held as under:

“19. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a still born child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An



investigation should not be shut out at the threshold if the allegations have some substance.

When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, *prima facie* establish the offence. At this stage neither the court can embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence or nor the court should judge the probability, reliability or genuineness of the allegations made therein. More so, the charge sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Criminal Procedure Code. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage."

10. Hon'ble Supreme Court in Sonu Gupta vs. Deepak Gupta 2015(3)SCC424, defined the limited nature of exercise to be undertaken by the Magistrate at the stage. It was held therein as under :

"7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether *prima facie* case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not



undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."

11. Hon'ble Supreme Court in Bhushan Kumar vs State (N.C.T of Delhi) 2021(5)SCC 424, held that it is not for the High Court to substitute its own discretion for that of the Magistrate who had decided to summon the accused and to examine the case on merits. Reliance was placed upon the earlier decision in Smt.Nagawwa v. Veeranna Shivalingappa Konjalgi & others (1976) 3 SCC 736. The relevant extracts from Bhushan Kumar's case(supra) read as under :

"9. A summon is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the



summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in Court. A person who is summoned is legally bound to appear before the Court on the given date and time. Willful disobedience is liable to be punished under Section 174 Indian Penal Code. It is a ground for Contempt of Court.

10. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued.
11. Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith."
12. There is *prima facie* evidence against the above applicants for the offence. In these circumstances, they have been rightly summoned for the trial for the offence under Sections 458, 447, 323 and 34 of Indian Penal Code by the Court below. As already noticed above the accused, having been summoned in a complaint pertaining to a warrant case, would get opportunity before the Magistrate to seek discharge particularly in terms of section 245 Cr.P.C. It was only on 22.4.2024 that the petitioners were summoned and within 43 days they have chosen to rush to High Court seeking indulgence by way of



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inherent jurisdiction, which infact is to be sparingly used particularly when alternate and efficacious remedies are available. This Court, thus, does not deem appropriate to exercise its extraordinary jurisdiction under Section 482 Cr.P.C., 1973.

13. Finding no merit, the instant petition is dismissed.

24.7.2024
Pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes
Whether Reportable	Yes