

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34029-2022
Date of Decision: 09.04.2024
MAHINDER SINGH @ SUKHBIR SINGH & OTHERS

... Petitioners

Versus

STATE OF HARYANA & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Tanvir S. Grewal, Advocate
for the petitioners.

Mr. Rajiv Goel, DAG, Haryana.

Mr. Amarjit Benewal, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the Complaint No.COMI/110 dated 27.07.2018 (Annexure P-1) District Kurukshetra registered under Sections 323, 324, 500, 506 and 34 IPC, 1860 titled as '*Shamshad Ali Versus Prem Singh & others*', the summoning order dated 15.03.2022 (Annexure P-2) under Sections 323, 324 and 506 IPC, 1860 and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that an FIR No.72 dated 29.06.2015 under Sections 323 and 325 IPC was registered at Police Station Jhansa, District Kurukshetra against respondent No.2-Shamshad Ali, his father Nawab Ali and brother Sahil alias Shelly on the basis of the statement of petitioner No.1-Mahinder Singh @ Sukhbir Singh. The said FIR is attached as Annexure P-3 to the petition.

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3. Regarding the same occurrence, as a cross-version, complaint No.COMI/688/2015 was instituted by Nawab Ali, father of respondent No.2 on 07.12.2015, nearly six months after the alleged occurrence. The copy of the said complaint is attached as Annexure P-4 to the petition.

4. The aforementioned complaint (Annexure P-4) came to be dismissed vide order dated 23.07.2018 (Annexure P-5).

5. After the dismissal of the first complaint, respondent No.2-Shamshad Ali instituted the second instant complaint bearing Complaint No.COMI/110 dated 27.07.2018 with identical allegations as levelled in the first complaint and without disclosing the factum of the filing and the dismissal of the first complaint. The only change in the subsequent complaint was that respondent No.2-Shamshad Ali stated that he had filed a complaint with the Investigating Agency regarding the same occurrence but the same had not been looked into. The copy of the second complaint dated 27.07.2018 is attached as Annexure P-1 to the petition.

6. Meanwhile, in the Trial emanating out of FIR No.72 dated 26.09.2015, respondent No.2-Shamshad Ali and his father Nawab Ali were convicted for one year U/s 323 and 325 read with Section 34 IPC vide judgment and order dated 12.11.2018 and 14.11.2018 (Annexure P-6).

7. The respondent No.2 and his father Nawab Ali filed an appeal against the said conviction whereas petitioner No.1 (complainant in the said FIR) filed an appeal for enhancement of sentence. Both the said appeals are pending adjudication before the Court concerned.

8. Meanwhile, on the basis of the second complaint dated 27.07.2018 (Annexure P-1), the impugned summoning order came to be

passed on 15.03.2022 (Annexure P-2) under Sections 323, 324 and 506 IPC, 1860.

9. The learned counsel for the petitioner contends that the Trial Court completely failed to appreciate the fact that an initial complaint regarding the same occurrence with the identical averments had already been dismissed by the Court vide order dated 23.07.2018 (Annexure P-5). The only difference in the subsequent complaint was that the same had been filed by respondent No.2-Shamshad Ali son of Nawab Ali who was the complainant in the first complaint. However, in order to create a false cause of action an undated representation to the SHO, P.S. Jhansa, District Kurukshetra was annexed with the second complaint. The said representation did not find mention in the initial complaint moved by Nawab Ali. Further, the fact that an earlier complaint had been filed which had been dismissed had not been disclosed by the complainant when he instituted the second complaint. Therefore, the complainant had misused the process of law by instituting the second complaint four days after the dismissal of the first complaint. He, therefore, prays that the instant complaint and consequential summoning order were liable to be quashed.

10. On the other hand, the learned State counsel along with the counsel for the complainant while not disputing the factual position states that as the Trial Court had applied its mind and summoned the accused, this Court ought not to interfere with the impugned summoning order and therefore, the present petition was liable to be dismissed.

11. I have heard the learned counsel for the parties.

12. Admittedly, the first complaint filed by Nawab Ali father of respondent No.2-Shamshad Ali came to be instituted on 07.12.2015 and came to be dismissed on 23.07.2018. Without disclosing the said fact, the instant second complaint came to be filed by respondent No.2 on 27.07.2018 which is a verbatim copy of the earlier complaint. On the basis of the second complaint, the impugned order and summoning order came to be passed. There cannot be a greater misuse of the law when a complainant institutes a subsequent complaint without disclosing that the earlier complaint on identical facts but at the instance of a different complainant already stands dismissed. In fact, the Summoning Court ought to have been vigilant while passing the impugned order especially in light of the fact that an undated representation (Annexure P-9) had been brought on record by the complainant/respondent No.2 to show that a complaint had been made to the Investigating Agency on which no action had been taken.

13. In view of the above, I find considerable merit in the present petition. Therefore, the Complaint No.COMI/110 dated 27.07.2018 (Annexure P-1) District Kurukshetra registered under Sections 323, 324, 500, 506 and 34 IPC, 1860, the summoning order dated 15.03.2022 (Annexure P-2) under Sections 323, 324 and 506 IPC, 1860 and all consequential proceedings arising therefrom stand quashed.

(JASJIT SINGH BEDI)
JUDGE

09.04.2024
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No