2024:PHHC:068674

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

130 **CRM-M-31591-2019(O&M)**
Date of Decision : February 05, 2024

SATNAM SINGH .....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Navkiran Singh, Advocate,
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

Mr. B.S.Baath, Advocate,
for the complainant.

KULDEEP TIWARI. J.(Oral)

1. The petitioner by invoking the inherent powers of this Court under section 482 Cr.P.C. seeks quashing of Kalendra dated 12.03.2019 (Annexure P-10) prepared by the SHO Police Station Chohla Sahib, District Tarn Taran, under Section 182 IPC, and the summoning order dated 29.04.2019 (Annexure P-12), whereby the petitioner has been summoned to face trial in the above Kalendra.

2. Learned counsel for the petitioner, in asking for relief (*supra*) submits that the impugned Kalendra, is barred by limitation as the same has been filed after a period of one year.

3. He further submits that in the instant case, Kalendra has been

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recommended by the Superintendent of Police (Investigation), Tarn Taran, vide inquiry report dated 17.01.2018 (Annexure P-7), whereas the impugned Kalendra, was prepared against the petitioner on dated 12.03.2019, after 1 year 2 months.

4. He also submits that though the application for extension of period of limitation, under Section 473 Cr.P.C. has been filed alongwith the Kalendra, however, without taking any decision on the said application, by the learned Magistrate concerned, straightway passed impugned summoning order.

5. He in addition submits that the Kalendra cannot be filed by an inferior officer, as per the reply in the petition, it was referred to the SSP, Tarn Taran, and the Kalendra was initially to be filed by the SP (Investigation), Tarn Taran. Whereas, neither the SP (Investigation)/ officer concerned, nor SSP, Tarn Taran or any senior officer, has signed the impugned Kalendra. However, in fact the Kalendra, in the present case has been filed by the SHO concerned, who can either be SI or Inspector, which violates the mandatory provisions of Section 195 Cr.P.C.

6. He over and above submits that the impugned order (*supra*), by which the petitioner has been summoned is a totally non-speaking order, and without any application of mind by the Court of Law. Therefore, the impugned summoning order, is required to be set aside, solely on this ground.

7. *Per contra*, learned counsel for the complainant assisted by the learned State counsel, submits that there is no delay in filing of the

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Kalendra, by the competent authority, as for the purpose of computing the period of limitation under Section 468 Cr.P.C., the relevant date, is the date of filing, the complaint or initiating criminal proceedings, and not the date of taking congnizance by the Magistrate or issuance of process by the Court.

8. To lend vigor to his argument, he placed reliance upon a judgement passed by the Constitution Bench of Hon'ble Supreme Court in **"Mrs. Sarah Mathew vs. The Institute of Cardio Vascular Diseases by its Director," 2014 (1) RCR (Crl.) 590**.

9. He further submits that the complaint was duly signed by the Senior Superintendent of Police, Tarn Taran, which clearly reflects from Annexure P-3, i.e. the application filed under Section 156(3) Cr.P.C., which is a part of the Kalendra. Therefore, the submission made by learned counsel for the petitioner, that the Kalendra filed by the inferior officer, is infact factually incorrect.

10. Finally, he submits that a Magistrate, while taking congnizance for an offence punishable under Section 182 IPC, and a complaint which has been filed by a public servant, passing of a detailed order is not required. Once the Magistrate, has taken cognizance, therefore, it is implied that the Magistrate has applied his judicious mind, and after considering the material on record, has concluded that the petitioner is required to be put to trial.

11. Before this Court, make any observation with regard to the issue raised hereinabove, it is apt to deal with the facts of this present case. The cause of action which arises through the instant petition is upon

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the Kalendra, as preferred by the competent authority, under Section 182 IPC. The relevant extract of Kalendra as culled out from the short reply dated 11.05.2023, filed by the respondent-State, reads as under:-

> "4. That the true facts pertaining to the present case are that the petitioner namely Satnam Singh Chahal moved a representation bearing No. 1730- DPO, dated 06.09.2017 before the Senior Superintendent of Police, Tarn Taran against Kultar Singh son of Dharam Singh resident of Warring Mohanpura, Tarn Taran by leveling the allegations for harassing him in illegal manner and he further stated in his complaint that he is a NRI and settled in America and also member of prestigious organization North American Punjabi Association (NAPA) in North America and besides this he is also a corporate member of press club, Jalandhar and as such he is having a respectable political status in the society and some days back Satnam Singh, Sub Inspector, Police Station Sadar, Chohla Sahib asked him on telephone to appear before him at the police station as the above Kultar Singh has moved a complaint against him and then he appeared before the Sub Inspector Satnam Singh and he told him that there is a dispute between his daughter namely Mandeep Kaur with her in-laws family, in which the complaint got lodged by him as well as his daughter regarding dowry and Kultar Singh is also member of opposite party of that case regarding which the investigation is going on at Police Station Jalandhar and in order to affect the said investigation, the above said against Kultar Singh has filed false complaint against him and he request to reject the complaint moved by Kultar Singh and further take legal action against Kultar Singh and the said representation was marked to the Superintendent of Police, Investigation, Tarn Taran for conducting the preliminary enquiry in the present matter and the enquiry was conducted by the Superintendent of Police, Investigation, Tarn Taran and after conducting the enquiry, the enquiry officer came to conclusion that the marriage of Mandip Kaur daughter of Satnam Singh Chahal was solemnized with Inderit Singh son of Gurdip Singh resident of Warring Mohanpura, now resident of America and after marriage the differences arose between both the husband and wife and regarding which they had filed a case for divorce in America in Superior Court Richard P Russia and they have been granted divorce with their mutual consent in the Concerned Court in America on 26.07.2017 and even the divorce decree has also been granted by the concerned Court and the marriage solemnized between the parties had already been dissolved with their mutual consent and the documents as well as divorce decree has also been produced before the enquiry officer and as such, it has been found that the allegations leveled by the petitioner are totally false and frivolous and further the petitioner alleged that the harassment was committed by the in-laws of her daughter is concerned, the daughter of the petitioner as well as her in-laws family are residing in America, as such the alleged occurrence if any as alleged by the petitioner occurred in America, the local police is not having jurisdiction to take action and further the allegations leveled by the petitioner against the above mentioned Kultar Singh are found to be false and frivolous and keeping in view, the above mentioned facts, the enquiry officer recommended to prepare a Kalendra under section 182 of IPC and to initiate the proceedings

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> under section 195 of Cr.P.C. and the findings of the enquiry officer were duly approved by the then Senior Superintendent of Police, Tarn Taran."

12. On the basis of the Kalendra, the Magistrate, without considering any material on record, and without applying any judicious mind straightway, has issued notice to the petitioner to face trial. The impugned summoning order reads as under :-

> "Heard. Notice to accused be issued for 22.05.2019."

13. This Court has heard the learned counsel for both the parties concerned, and has gone through the entire case file.

14. Though the petitioner has raised number of issues, however, this Court is of the view that the order of summoning passed by the Magistrate concerned, is totally a non-speaking order. There is no reason assigned before issuing notice in the complaint, as filed against the present petitioner by the Magistrate concerned. Infact, it is a just one line order which seems to have been passed in a mechanical manner.

15. Further, provisions of Sections 200 and 204 of the Cr.P.C. imposes an obligation upon a Magistrate, to record his satisfaction that the accused on the basis of material placed before him, is required to be summoned or not. For this, this Court gets strength from a judgment passed by a co-ordinate bench of this Court, in "**Sanjeev Kumar Shama vs. State of Punjab**" **2006(3) RCR (Crl.) 894.** The relevant extract thereof reads as under:-

> "7. A perusal of the above order reveals that while summoning the petitioners no reason has been assigned. An order, summoning an accused is a Judicial order, to be passed upon a Judicial appraisal of the complaint and the statements, if any, made by the complainant and his witnesses. Sections 200 and 204 of the Criminal Procedure Code read as follows:

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"Section 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.

Section 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, 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."

8. Section 200 of the Criminal Procedure Code requires a Magistrate, before he takes cognizance, to examine the complainant and his witnesses, if any. The first proviso to this section, confers a discretion upon the Magistrate to dispense with the examination of a complainant and his witnesses, where the complaint is filed in writing, by a public servant acting or purporting to act in the discharge of his official duties or where a complaint is made by a Court or by a Magistrate under Section 192 of the Code of Criminal Procedure.

9. The process of summoning, is set into motion by an order passed under Section 204 Criminal Procedure Code The said statutory provision, uses two expressions "... If in the Cinion of a Magistrate...." and..... there

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> is sufficient ground for proceeding.... These expressions, leave no manner of doubt, as to the nature of an order required to be passed. The essence of an order of summoning, is the opinion recorded and the reasons assigned, duly fortified by a process of reasoning, clearly discernible from the order. The only discretion, available to Magistrate, is to dispense with the examination of a public servant or his witnesses, in terms of the first proviso to Section 200. This proviso does not suggest that in a complaint filed by a public servant acting or purporting to act in the discharge of his official duties, the Court is absolved of its statutory obligation to pass a reasoned judicial order, while summoning an accused. Contention, raised by counsel for the respondent that where a complaint is filed by a public servant, the Court need not record reasons for summoning, in my considered opinion, does merit acceptance. There is no statutory sanction or legal basis for such an argument.
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> 10. Another reason that necessitates a Magistrate passing a reasoned order, is a right vested in an accused, to be made aware of the allegations, levelled against him, the opinion of the Magistrate and the reasons for the opinion, so formed. An order devoid of reasons, howsoever minimal, would violate the provisions of Section 204 of the Criminal Procedure Code."

16. The *ratio* of the aforesaid judgment, clearly covers the case of the present petitioner. Therefore, this Court has no hesitation to record that the impugned order (*supra*), is liable to be set aside, being a totally non-speaking order, and being passed without considering the material on record.

17. Consequently, instant petition is **allowed**, and the impugned order (*supra*), is hereby **set aside**, with the matter remanded back to the learned trial Court concerned, to pass *de novo* order after considering the all material on record.

18. All pending application(s), if any, also stands disposed of.

(KULDEEP TIWARI)
JUDGE

February 05, 2024
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Whether speaking/reasoned. : Yes
Whether Reportable. : Yes

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