



CRM-M-35377-2024

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-35377-2024

Date of decision: 5th September, 2024

Sameer Bansal and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ashit Malik, Advocate for the petitioners.

Mr. Arjun Lakhanpal, Addl. A.G. Haryana.

MANISHA BATRA, J (ORAL):-

The present petition has been filed by the petitioner under Section 528 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the BNNS') seeking quashing of criminal complaint bearing No. 11 dated 02.03.2017 titled as 'Vedparkash Vs. Babu Singh and others' and the order dated 16.10.2019 passed therein, whereby the petitioners had been ordered to be summoned as accused and order dated 23.05.2024 passed by the Revisional Court upholding the order dated 16.10.2019.

2. The aforementioned complaint has been filed by the respondent No.2- complainant-Ved Parkash on the allegations that he was working in M/s Digi Drives Pvt. Ltd. (for short 'company') since 01.03.2011. His services as workman were terminated on 10.03.2015. He had made a



reference to the Labour Court, Faridabad which had been allowed and direction was given to the company to join him back on duty. On 3.02.2017, he had gone to join his duties with the aforesaid company but was not permitted to do so. Rather, the present petitioners who are the Director and Accountant respectively of the above said company along with the co-accused had assaulted him by wrongfully restraining him, forcibly obtained his signatures upon blank papers and criminally intimidated him. As the police did not take any action on the complaint filed by him, he approached the Court of the concerned Magistrate. After recording preliminary evidence, learned trial Magistrate vide order dated 16.10.2019, issued process against the petitioners for commission of offences punishable under Sections 323, 341 and 506 read with Section 34 of IPC.

3. Feeling aggrieved, the petitioners filed a revision petition before the Court of Additional Sessions Judge, Palwal which was dismissed vide order dated 23.05.2024.

4. Seeking quashing of the criminal complaint as well as orders dated 16.10.2019 and 23.05.2024 respectively, it is argued by learned counsel for the petitioners that the impugned orders are not legally sustainable. Infact, the respondent-complainant is a notorious person with history of having confrontation with the Management of the company in which he worked on one count or the other. He was guilty of committing misconduct with his superior officers and used to remain absent from duty resulting into termination of his services. In pursuance of a settlement that took place between the parties before Labour Court, Faridabad, the



respondent No.2 came to join duty on 13.02.2017, but instead of performing the same diligently, he again misbehaved with his seniors, to which he was suspended. He also assaulted his superior. Therefore, his services were suspended. The matter was reported to the police by the co-accused Ram Niwas- Supervisor of the company and a *kalendra* under Section 107 read with Section 150 of Cr.P.C. was filed against the respondent. As a counter blast, the respondent filed this complaint against the petitioners and co-accused Ram Niwas. There was neither any medical evidence indicating that the respondent had sustained any injuries nor the testimony of the respondent had been corroborated by any other evidence. While acting upon the sole testimony of the respondent, the learned trial Magistrate had issued process against the petitioners and co-accused Ram Niwas. The allegations as levelled in the complaint were palpably false and did not make out any case against the petitioner. It is, therefore, argued that the petition deserves to be allowed and the complaint as well as order passed by the trial Magistrate as well as revisional court are liable to be set aside.

5. Learned State counsel has not chosen to raise any argument, since the impugned order has been passed in a private complaint case.

6. Learned counsel for the petitioner has been heard at considerable length and the record has been carefully perused.

7. The petitioners have been summoned by the Court of learned Magistrate to face trial for commission of offence punishable under Section 420 read with Section 34 of IPC. Undisputedly, a Magistrate has power to take cognizance of an offence under the provisions of Section 200 of Code



of Criminal Procedure in a private complaint. As per Section 204 of the Code, if in the opinion of the Magistrate, there are sufficient grounds for proceedings, he shall issue summons for procuring the attendance of accused in a summons or warrant case. The sine qua non, for exercising the power under Section 204 to issue process is the subjective satisfaction regarding the existence of sufficient ground for proceeding. The golden standard for summoning an accused in a private complaint case was laid down by Hon'ble Supreme Court in its decision in *M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others : (1998) SCC (Criminal) 1400*, wherein it was observed that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of ordinary course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and the evidence that would also be sufficient for the complainant to succeed in bringing home the charge as against the accused.

8. It is also well settled proposition of law that there must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded, there is ground for proceedings against the accused under Section 204 of Cr.P.C., by issuing



process of appearance. Reference in this regard can be made in ***Mahmoodul Rehman and others Vs. Khazir Mohammad Tunda and others : (2015) 12 SCC 420***, the Hon'ble Supreme Court held thus:-

“22.....The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court.....In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction.....To be called to appear before criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

9. It is also well settled proposition of law that at the stage of summoning, it is merely to be seen whether a *prima facie* case is made out or not. While dealing with the question as to quashing of a complaint and summoning order, the adjudication of questions of facts and appreciation of evidence or examining reliability and credibility of the version, does not fall within the arena of jurisdiction under Section 482 of Cr.P.C. and jurisdiction



to quash a complaint, FIR or a chargesheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint or material on record even if taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, a chargesheet may be quashed

10. On perusal of material placed on record, I am of the considered opinion that the contentions raised by the petitioners call for determination on question of facts which can be adequately adjudicated upon only by the trial court by assessment of the evidence produced on record. At this stage, the adjudication of question of facts and appreciation of evidence or examining reliability and credibility of the version in the complaint cannot be considered as the same does not fall within the arena of jurisdiction to quash the complaint. The allegations levelled in the complaint taken at their face value make a *prima faice* case constituting the offence for which the petitioners have been summoned. It cannot be held that the impugned criminal proceedings that have been initiated by the respondent No.1/complainant by filing complaint are manifestly attended with any *mala fide* and maliciously instituted with any ulterior motive for wreaking vengeance on the accused or with a view to spite them due to private or personal grudge. Rather, it appears that the impugned order has been passed by applying due procedure and no substantial illegality, perversity or any substantial error could be pointed out by learned counsel for the petitioners in the same. In my considered opinion, though this Court possesses inherent powers, which are very wide but the very plenitude of the power requires



great caution in its exercise and this inherent power cannot be exercised to stifle a legitimate prosecution. Such powers have to be exercised only to give effect to any order under Cr.P.C. to prevent abuse of process of the Court and to secure the ends of justice. In the instant case, no such eventuality could be drawn. The submissions which have been raised by learned counsel for the petitioners call for determination on questions of fact which may be adequately adjudicated upon only by the trial Court and even the submissions made on the point of law also can be more appropriately gone into only by the trial Court.

11. After considering the contentions raised by learned counsel for the petitioners and perusing the contents of the impugned complaint and the material in support of same, this Court does not find it to be a case which could be determined or gone into this petition and to hold a parallel trial.

12. Accordingly, it is held that the order passed by the trial Magistrate of issuing process against the petitioners and accused does not suffer from any manifest infirmity much less illegality warranting any interference by this Court. Therefore, no ground has been made out to interfere with the same. Resultantly, the petitioners are not entitled to be granted the relief of setting aside the summoning order.

13. So far as the prayer made by the petitioners for quashing the complaint is concerned, no doubt a complaint can be quashed by invoking power under Section 528 of the BNNS. However, for that purpose, certain conditions are to be satisfied. These conditions were discussed in detail by

Hon'ble Supreme Court in *Smt. Nagawwa Vs. Veeranna Shivalingappa*



Konjalzi and others:(1976) 3 SCC 736, which are as follows:

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

14. On going through the material placed on record, it is apparent that the allegations as levelled in the complaint as filed by the respondent No.2 to the effect that the petitioners had voluntarily caused hurt to him by wrongfully restraining him and extended threats to him, have been corroborated by the testimony of the complainant as well as medical evidence placed on record and it is not that this evidence does not disclose the essential ingredients for commission of offences for which the petitioners have been summoned. The allegations are specific and neither can be stated to be patently absurd or inherently improbable nor the discretion exercised by the Magistrate for issuing process can be stated to be



capricious or arbitrary, not based on any evidence or based on inadmissible evidence. Therefore, I am of the considered opinion that no reasonable grounds for quashing the complaint have been made out as well. Accordingly, finding no merit in the petition, the same is dismissed.

[MANISHA BATRA]
JUDGE

5th September, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No