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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39433-2024

Date of Decision:- 18.11.2024

SURINDER KAUR AND OTHERS

....Petitioners

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Raj Kumar Gupta, Advocate for the petitioners.

Mr. Rupinder Singh Jhand, Addl. A.G., Haryana.

AMARJOT BHATTI, J.

1. Petitioners have filed petition under Section 528 of BNSS, 2023 for quashing the order dated 03.04.2024 (Annexure P-19) passed by learned Chief Judicial Magistrate, Panipat (in short 'CJM') on application filed by petitioners under Section 410 of Cr.P.C. (Annexure P-18) with a prayer to allow said application by passing necessary order for clubbing two complaints going on in different Courts or to pass any other direction which the Court may deem fit in the given facts and circumstances of the case.
2. Learned counsel for petitioners argued that petitioners are being harassed by private respondents who are filing multiple complaints

regarding same very incident. Present petitioners fully cooperated in the investigation. Now private respondents have filed two separate complaints with same facts under Section 156 (3) Cr.P.C. for getting the case registered against petitioners. In this connection, said complaint filed by private respondents Pratap Singh against petitioners are Annexure P-15 and P-16 respectively. Application filed by petitioners in the Court of learned CJM is Annexure P-18. Learned CJM by passing impugned order dated 03.04.2024 (Annexure P-19) declined the said application by observing as under:-

“As far as function of Chief Judicial Magistrate and power under Section 410 Cr.P.C. are concerned, they are quite clear. But as very fairly accepted by learned counsel for applicant before this Court that in none of the cases pending in either of Courts, no summoning order has been passed till date. It is well settled law that unless any such summoning order has been passed, proposed accused cannot be heard by the court for any purpose. Present applicants are admittedly proposed accused in said criminal complaints. Whether cause of action in both these complaint is same or different, same cannot be decided by this Court in present application. Moreso, when no adverse orders has been passed against his applicants till date.

At this stage, jurisdiction under Section 410 Cr.P.C. can be utilised by this Court either upon reference of the learned Court trying the matter or upon application of the complainant in said cases. At cost of repetition, it may be

reiterated that till no summoning is passed against the accused (present applicants), they cannot be heard in relation to said criminal complaints for any purpose by the Court.

Hence, present application is liable to be dismissed. Copy of this order be placed on record on both concerned files and present case be consigned to the record room.”

3. Learned counsel for petitioners by relying upon the judgment of *Hon’ble Supreme Court of India 2021 (2) RCR (Criminal) 300* case titled as *“Krishna Lal Chawla and Ors. Vs. State of U.P. & Anr.”* referred to para Nos.18 and 19 which runs as under:-

“18. As aforesaid, the trial courts and the Magistrates have an important role in curbing this injustice. They are the first lines of defence for both the integrity of the criminal justice system, and the harassed and distraught litigant. We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court

of this land.

19. As recorded by us above, the present controversy poses a typical example of frivolous litigants abusing court process to achieve their mischievous ends. In the case before us, the Magistrate was aware of the significant delay in the filing of private complaint by Respondent No.2, and of the material improvements from the earlier NCR No.158/2012 which were made in the private complaint. It was incumbent on the Magistrate to examine any possibility of abuse of process of the court, make further enquiries, and dismiss the frivolous complaint at the outset after judicial application of mind.”

4. It is argued that learned CJM knowing fully well that two separate complaints with same facts have been filed by the private respondents and the same are pending in different Courts even then no appropriate step has been taken.

5. I have considered the arguments and have gone through the record carefully. It is conceded that in complaint titled Pratap Singh Vs. Mukesh and others under Sections 419/420/467/468/471/120-B/406/148/149/34 IPC (Annexure P-15) and another complaint titled as Pratap Singh Vs. Mukesh & Others under Sections 420/467/468/471/ 195/120B/148/149/34 of IPC (Annexure P-16) are pending in different Courts and till date no summoning order has been passed. On account of this, learned CJM concluded that since no summoning order has been passed, therefore,

petitioners had no locus standi to file application under Section 410 Cr.P.C. for transferring of cases in one Court. Relevant provision of Section 410 of Cr.P.C. runs as under:-

“410. Withdrawal of cases by Judicial Magistrate.- (1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) Any Judicial Magistrate may recall any case made over by him under sub-section (2) of Section 192 to any other Magistrate and may inquire into or try such cases himself.”

As per the aforesaid Section 410 (1), Chief Judicial Magistrate has got ample power to deal with such like situation. No doubt no summoning order has been passed in the aforesaid complaints by the concerned Magistrate but this fact has come to the notice of learned CJM that two separate complaints with similar facts are pending before two Courts. Therefore, learned CJM could have taken appropriate steps suo moto.

6. Under these facts and circumstances of the case, impugned order dated 03.04.2024 (Annexure P-19) passed by learned Chief Judicial Magistrate, Panipat is not on sound footing and the same is accordingly quashed and the case is remanded back to learned CJM to pass afresh order on application under Sections 410 Cr.P.C. (Annexure P-18).

7. With the aforesaid direction, petition is, accordingly, disposed of.

8. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(AMARJOT BHATTI)
JUDGE

18.11.2024
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Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No