

2024:PHHC:125838



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

125

CRM-M No.46199 of 2024
Date of decision: 18.09.2024

Gurlal Singh ... Petitioner

Vs.

Gurwinder Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Surinder Garg, Advocate,
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure seeking modification in the order dated 04.08.2023 as passed by the Court of Judicial Magistrate, 1st Class, Budhlada in Criminal Complaint bearing CIS No.COMI/17/2022 titled as *Gurlal Singh v. Gurwinder Singh and others*, whereby process was issued against the respondents to appear and face trial for commission of offences punishable under Sections 148, 447, 506 read with Section 120-B and 149 of IPC. However, they were not ordered to be summoned for commission of offences under Section 379 and 427 of IPC and Section 25 and 27 of Arms Act, 1959 (For short "Act, 1959"). Prayer has also been made for setting aside the order dated 18.05.2024 passed by the Court of learned Additional Sessions Judge, Mansa in

2024:PHHC:125838



Criminal Revision bearing CIS No.CRR/37/2023 titled as *Gurlal Singh v. Gurwinder Singh and others* filed against the order of Magistrate, whereby the above said revision petition was dismissed.

2. Brief facts of the case relevant for the purpose of disposal of the instant petition are that the petitioner filed the aforementioned complaint on the allegations that he along with his brothers was owner in possession of agricultural land measuring 40 Kanals 05 Marlas situated in the revenue estate of Village Mal Singh Wala. On 03.11.2021, he along with his brothers had gone to this land to check the crop sown there, when the respondents along with some other persons trespassed into their land. They were armed with weapons. They started cutting paddy crop from their land. The complainant and his brothers tried to stop them but while wielding weapons and extending threats to kill them, the respondents removed the paddy crop belonging to the petitioner and committed theft of the same and then loaded the paddy in their tractor trolley. The petitioner and his brothers immediately informed the police and the respondents were caught red handed. However, in connivance with them, the police officials released them without taking any action.

3. As per the further allegations, the petitioner again irrigated his agricultural land for sowing wheat crop but on 20.11.2021, the respondents along with a huge number of unknown persons again trespassed into his land while being armed with weapons. They were also having rotavators, two tractors, cars and motorcycles. The complainant

2024:PHHC:125838



tried to stop them but the respondents proclaimed that they would take possession of their land and will sow the crop. They criminally intimidated the complainant. The police did not take any action despite being informed of this incident also thereby constraining the petitioner to file the complaint.

4. In preliminary evidence, the petitioner examined two witnesses namely, CW-1 Harjinder Singh and CW-2 Jaswinder Singh besides himself stepping into the witness box as CW-3. Certain documents were also produced in evidence.

5. On considering the evidence so produced on record and on finding a prima facie case for commission of offences punishable under Sections 120-B, 148, 447 and 506 read with Section 149 of IPC, the learned trial Magistrate vide order dated 04.08.2023, issued process against the respondents under the aforementioned sections but simultaneously held that no case for commission of offences under Sections 379 and 427 of IPC and Section 25 and 27 of Act, 1959 had been made out.

6. Dissatisfied with the order of not issuing process against the respondents for commission of offences under Section 25 and 27 of Act, 1959 and Sections 379 and 427 of IPC, the petitioner preferred revision petition before the Court of Additional Sessions Judge which has been dismissed as already discussed.

7. It is argued by learned counsel for the petitioner that the order

2024:PHHC:125838



passed by the learned trial Magistrate is liable to be modified to the extent to which the respondents were not ordered to be summoned as accused and face trial for commission of offences punishable under Sections 379 and 427 of IPC as well as under Sections 25 and 27 of Act, 1959. It is argued that the preliminary evidence produced on record by the petitioner in the form of testimonies of CW-1 and CW-2 coupled with his own statement was sufficient to prove that the respondents after criminally trespassing into his agricultural land committed theft of paddy crop on 03.11.2021 and also destroyed the same. He further submitted that overwhelming evidence had been produced on record by him to show that the respondents No.1 and 2 were having fire arms with them. He has submitted that this evidence was sufficient to issue process for commission of offences under Sections 379 and 427 of IPC as well as Sections 25 and 27 of Act, 1959 as against the respondents and the learned trial Magistrate by not issuing process under the aforementioned section had committed a grave error. It is further argued that the learned Revisional Court also did not appreciate the evidence produced on record by the petitioner and wrongly affirmed the order passed by the trial Magistrate. With these broad submissions, it is urged that the impugned order dated 04.08.2023 be modified and the respondents be ordered to be summoned under the aforementioned sections in addition to the sections for which process has already been ordered to be issued and the order dated 18.05.2024 as passed by the Revisional Court be also set aside.

2024:PHHC:125838



8. Learned counsel for the petitioner has been heard at length and the material placed on record has been carefully perused.

9. The petitioner has filed complaint against the respondents on the allegations that on 03.11.2021, by forming membership of an unlawful assembly and in pursuance of common object of that assembly, they criminally trespassed into the agricultural land owned by his brother and himself, caused damage to his land, committed theft of paddy crop by criminally intimidating him by showing firearms and committed offence of rioting. The learned trial Court after considering the preliminary evidence produced on record, issued process under Sections 447, 506, 120-B, 148 read with Section 149 of IPC as against the respondents by holding that a prima facie case for commission of these offences had been made out against them but simultaneously observed that no case for summoning them under Sections 379 and 427 of IPC as well as under Sections 25 and 27 of Act, 959 had been made out.

10. No doubt, a Magistrate has power to take cognizance of an offence under the provisions of Section 200 of the Code of Criminal Procedure in a private complaint and to issue process when the material produced on record, in his/her opinion, is sufficient to do so. It is well settled proposition of law 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

2024:PHHC:125838



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 the 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 him in bringing home the charge as against the accused. The Magistrate has to carefully scrutinize the evidence brought on record. Then as per Section 204 of the Code, if in the opinion of the Magistrate taking cognizance of an offence, there are sufficient grounds for proceeding, he shall issue summons for procuring the attendance of the accused. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint should constitute an offence and when considered along with the statements recorded, would, prima facie, make the accused answerable before the Court. There should be sufficient incriminating material against the accused concerned before proceeding against them.

11. In the instant case, the learned Magistrate after considering the allegations put forth in the complaint filed by the petitioner as well as the preliminary evidence produced on record, observed that no case for commission of offences punishable under Sections 379 and 427 of IPC and Sections 25 and 27 of Act, 1959 is made out. The petitioner has placed on record Annexures P-5 to P-7 which are copies of statements of CW-1 Harjinder Singh and CW-2 Jaswinder Singh who are his cousin

2024:PHHC:125838



brother and real brother respectively and of CW-3 i.e. himself which were recorded before the learned trial Magistrate by way of preliminary evidence. On a perusal of these statements, undoubtedly, it is observed that all these witnesses deposed that the respondents by entering their agricultural land had committed theft of paddy crop grown in the land owned by them while showing weapons on 03.11.2021. However, none of them deposed as to when the said crop had been grown, how much mature that crop was and what was the quantity of the said crop. As per the allegations, the matter had been reported to the police but no evidence came on record to show that the stolen paddy crop was recovered from either of the respondents. It has also not come on record that the respondents had taken the paddy crop to some other place from the land allegedly possessed by the petitioner. The learned Revisional Court had observed that as per the status report called by the trial Court, the petitioner was not even in possession of the land over which crop was alleged to be sown by him. The petitioner also did not bring any material on record before the learned trial Court to show that infact his brothers and himself had sown any paddy crop over the particular piece of land. No photographs qua the crop so grown and then about cutting down of the same had been placed on record. The case of the petitioner with regard to theft of paddy crop by the respondents rested upon simple oral statements of his brother and himself and no independent witness has been shown to be examined by him in this regard. As such, in the

2024:PHHC:125838



considered opinion of this Court, the learned Courts below had rightly observed that the ingredients for commission of offence punishable under Section 379 of IPC had not been attracted and no case for issuing process under that section had been made out. So far as Section 427 of IPC is concerned, the same provides punishment for committing mischief thereby causing loss or damage to the amount of Rs.50/- or upwards. The offence of mischief is defined under Section 425 of IPC. In order that Section 425 may apply, it is to be shown that the accused had-

- (i) caused the destruction of some property or some change in it or in its situation.
- (ii) such change had destroyed or diminished the value or utility of the property or affected the property injuriously.
- (iii) the causing of destruction or change in the property or in its situation was with the intention to cause or with the knowledge of the likelihood of thereby causing wrongful loss or damage to the complainant.

12. It is explicit from a reading of the above that to summon a person as an accused for committing offence of mischief or to sustain a conviction for such offence, it must be proved that the accused had intention to cause loss or damage to any property. The intention to cause damage may be presumed from the overt acts of the accused. The witnesses examined by the petitioner as well as himself though deposed that paddy crop grown by the petitioner over his agricultural land had

2024:PHHC:125838



been stolen, however, it was neither alleged nor any satisfactory evidence had been produced on record to show that any destruction of such crop had been caused with intent or knowledge to do so. Therefore, in the considered opinion of this Court, no case for issuing process for commission of offence under Section 427 of IPC as against the respondents had been made out as well.

13. Then so far as the plea taken by the petitioner that the learned trial Court had committed an error in not issuing process against the respondents under Sections 25 and 27 of Act, 1959 is concerned, as per the allegations in the complaint, the respondents No.1 and 2 were armed with some firearm. CW-1 to CW-3 also deposed so. However, it was neither mentioned in the complaint nor by these witnesses as to whether both these respondents were having any separate firearms or it was one firearm which was carried by them at the time of the occurrence. As per Section 25 of Act, 1959, exposure of a firearm or possession of the same for sale, transfer, conversion, repair in contravention of Section 5 is punishable. As per Section 39 of this Act, no prosecution can be instituted against any person in respect of any offence under Section 3 without the previous sanction of the District Magistrate. Section 3 takes in its folds possession of a firearm without any licence. The simplicitor allegation that the respondents No.1 and 2 exposed some firearm was not sufficient to invoke the provisions of Section 25 of the Act, 1959 and that too without the statutory previous sanction which was not sought to be

2024:PHHC:125838



procured by the petitioner in the instant case. More so, no recovery of such firearm was alleged to have been effected from either of the respondents No.1 and 2 nor the use of such firearm had been alleged thereby attracting the provisions of Section 27 of Act, 1959, as such, no case for commission of offences punishable under Sections 25 and 27 of Act, 1959 had been made out as against the respondents.

14. In view of the discussion as made above, no manifest illegality or infirmity can be stated to have been committed by learned trial Magistrate while passing the impugned order dated 04.08.2023 and by the revisional Court by declining the prayer as made by the petitioner for modification of the trial Court order. As such, affirming these orders and finding no merit in the petition, the same is ordered to be dismissed.

18.09.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No