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201 (3 cases)

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

Date of Decision:- 06.09.2024

(1)

CRM-M-44606-2019

Jasdeep Singh

...Petitioner

Versus

Harbhajan Singh @ Bhajan Singh

...Respondent

(2)

CRM-M-45626-2019

Jagtar Singh and Others

...Petitioners

Versus

Harbhajan Singh @ Bhajan Singh

...Respondent

(3)

CRM-M-2424-2020

Gurpal Singh

...Petitioner

Versus

Harbhajan Singh @ Bhajan Singh

...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Ashish Gupta, Advocate
for the petitioners in CRM-M-2424-2020 and
in CRM-M-45626-2019.

Mr. Manish Kumar Singla, Advocate with
Mr. Dinesh Kumar, Advocate
for the petitioner in CRM-M-44606-2019.

Mr. Arshdeep Singh Brar, Advocate
for the respondent.

**AMARJOT BHATTI, J.**

1. Petitioners Jasdeep Singh, Jagtar Singh, Harmandeep Singh @Harman Singh, Harcharan Singh and Gurpal Singh have filed petition under Section 482 Cr.P.C. for quashing of complaint No. 21 dated 14.10.2016 (Annexure P-1) filed under Sections 324, 427, 447, 379, 188, 148, 149 of IPC, titled “Harbhajan Singh @ Bhajan Singh Versus Jagtar Singh and Others” as well as summoning order dated 15.02.2019, Annexure P-2 passed by the Court of learned Sub Divisional Judicial Magistrate, Nihal Singh Wala, District Moga and all subsequent proceedings arising out of the said complaint or to grant any other relief which the Court may deem fit and proper in the given facts and circumstances of case.

2. As per the facts of case, Harbhajan Singh @ Bhajan Singh filed complaint before Sub Divisional Judicial Magistrate, Nihal Singh Wala, District Moga with the allegations that on 14.05.2014, at about 08:30 am, he along with his brother Khem Singh had gone to fields to collect fodder. They reached in their fields and saw that Jass Singh s/o Harcharan Singh was plowing common *watt* of their field with his Ford tractor and accused Jagtar Singh was standing near the common *watt* along with his licensed revolver, whereas, Harman Singh, Harcharan Singh and Gurpal Singh were standing there, armed with Dangs/Tokke. Complainant and his brother Khem Singh stopped them from plowing common *watt* and on this Jagtar Singh pointed his revolver towards them that they will not be permitted to enter the fields. Complainant and his brother again requested them not to plow the common *watt* and on this all accused in connivance with each



other inflicted injuries to complainant with their respective weapons. Khem Singh brother of complainant raised alarm for help and some persons from adjoining grain market saved them from the hands of accused. Accused persons broke the gate of tubewell motor constructed in their fields. They damaged submersible bore and took away five bags of Urea lying in the said tubewell motor room, spades and iron gate installed at the door of said room, in their Bolero car bearing No. PB-29-J-0810 and committed theft. It is further alleged that complainant had deposited his rifle in police post Lopo due to Parliamentary Elections, 2014, whereas, Jagtar Singh defied the election code of conduct by not depositing his revolver with the arms dealer or at police post Lopo or at any other police station. It is further alleged that matter was reported to police post Badhni Kalan. Instead of taking action against the accused, police registered FIR No. 49 dated 14.05.2014 under Section 323, 341, 427, 148, 149 of IPC against complainant. Complainant filed application to SSP, Moga for holding inquiry and then police registered DDR dated 17.11.2014 against accused with assurance that they will take action. However, police did not take any action against accused and ultimately, complaint (Annexure P-1) was filed. After recording of pre-summoning evidence, summoning order dated 15.02.2019 is passed by Sub Divisional Judicial Magistrate, Nihal Singh Wala, which is Annexure P-2.

3. Feeling aggrieved of said complaint and summoning order, all accused have filed separate petitions as referred above.

4. Learned counsel(s) for petitioners argued that complaint filed by complainant is hit by Section 468 of Cr.P.C. as the alleged occurrence took



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place on 14.05.2014, whereas complaint was filed on 14.10.2016. Therefore, complaint filed by complainant is barred by limitation. From the facts narrated by complainant, no *prima facie* case is made out. Allegations are general in nature. No specific role is attributed to petitioners. Impugned order passed by Sub Divisional Judicial Magistrate is cryptic, without appreciating the facts and evidence led before the Court. In-fact, FIR No. 49 dated 14.05.2014 under Section 323, 341, 427, 148, 149 of IPC was registered against complainant at Police Station Badhni Kalan. Learned counsel for petitioners has referred to judgment of **Hon'ble Supreme Court of India in 1998 AIR (SC) 128**, case titled "**M/s Pepsi Foods Ltd. Versus Special Judicial Magistrate**". Relevant para No. 26 runs as under :-

"26. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of 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 that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

Therefore, impugned complaint and summoning order dated 15.02.2019 passed by Sub Divisional Judicial Magistrate, Nihal Singh



Wala are liable to be quashed.

5. On the other hand, learned counsel representing respondent pointed out that after the alleged occurrence, matter was reported to police but no action was taken. After much pursuance, police recorded DDR dated 17.11.2014 and in that DDR, no action was taken which ultimately compelled complainant to file complaint before Sub Divisional Judicial Magistrate. Therefore, delay in filing complaint is well explained. In support of his arguments, learned counsel for respondent has relied upon the judgment of **Hon'ble Supreme Court of India in 2014 1 RCR(Cri) 590**, case titled **"Mrs. Sarah Mathew Versus The Institute of Cardio Vascular Diseases by its Director – Dr. K.M. Cherian & Ors."** with **connected cases**. Relevant para No. 21 runs as under :-

"21. Gist of these provisions could now be stated. Section 467 defines the phrase 'period of limitation' to mean the period specified in Section 468 for taking cognizance of certain offences. Section 468 stipulates the bar of limitation. Sub-section (1) of Section 468 makes it clear that a fetter is put on the court's power to take cognizance of an offence of the category mentioned in sub-section (2) after the expiry of period of limitation. Sub-section (2) lays down the period of limitation for certain offences. Section 469 states when the period of limitation commences. It is dexterously drafted so as to prevent advantage of bar of limitation being taken by the accused. It states that period of limitation in relation to an offence shall commence either from the date of offence or from the date when the offence is detected. Section 470 provides for exclusion of time in certain cases. It inter alia states that while computing the period of limitation in relation to an offence, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender, should be excluded. The explanation to this section states that in computing limitation, the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly time during which the accused is absconding or is absent from India shall also be excluded. Section 471



provides for exclusion of date on which court is closed and Section 472 provides for continuing offence. Section 473 is an overriding provision which enables courts to condone delay where such delay has been properly explained or where the interest of justice demands extension of period of limitation. Analysis of these provisions indicates that Chapter XXXVI is a Code by itself so far as limitation is concerned. All the provisions of this Chapter will have to be read cumulatively. Sections 468 and 469 will have to be read with Section 473.”

There are specific allegations against all petitioners/accused. Convincing evidence was led in complaint case and after appreciating pre-summoning evidence, all petitioners/accused were ordered to be summoned vide summoning order dated 15.02.2019, Annexure P-2. Learned Sub Divisional Judicial Magistrate, Nihal Singh Wala has not committed any illegality or error while summoning present petitioners/accused. Therefore, petition(s) filed by all the petitioners/accused deserve dismissal.

6. I have considered the arguments and have gone through the record. Learned counsel(s) representing petitioners firstly raised the issue that there is delay in filing complaint and it is hit by Section 468 of Cr.P.C. Therefore, Sub Divisional Judicial Magistrate, Nihal Singh Wala was not competent to take cognizance after the lapse of period of limitation. As per the contents of complaint, it is filed on 14.10.2016 under Section 324, 427, 447, 379, 188, 148, 149 of IPC. Considering the nature of offence and sentence provided thereunder, learned counsel(s) for petitioners has failed to explain as to how complaint was barred by limitation. Alleged occurrence took place on 14.05.2014 and complaint is filed on 14.10.2016. In para No. 4 of complaint, complainant categorically alleged that matter was reported to police for taking action against accused and ultimately, police registered DDR dated 17.11.2014, but no concrete action was taken



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against accused named by complainant, compelled him to file present complaint. Therefore, in the light of judgment cited in **2014 1 RCR(Cri) 590 (supra)** arguments advanced by learned counsel(s) for petitioners on this point that complaint is barred by limitation does not hold any ground.

7. Learned counsel(s) representing petitioners has also challenged complaint as well as summoning order dated 15.02.2019, Annexures P-1 and P-2 respectively. I have considered the allegations detailed in complaint and have also considered the summoning order. As per summoning order, complainant had examined Khem Singh, eye witness as CW-2, Dr. Saurav Jain as CW-3, Constable Sukhvir Singh as CW-4 and apart from this, complainant also stepped into witness box as CW-1. Therefore, apart from the statement of complainant regarding the said occurrence, he is supported by one eye witness Khem Singh CW-2. Doctor was also examined to prove the injuries suffered by complainant. All petitioners/accused are specifically named and specific role is attributed to them at the time of commission of alleged offence. At the stage of summoning, only *prima facie* case is to be seen. Sub Divisional Judicial Magistrate, Nihal Singh Wala while passing impugned summoning order dated 15.02.2019 relied upon pre-summoning evidence and came to conclusion that *prima facie* case was made out against all petitioners/accused under Section 324, 427, 447, 379, 188, 148, 149 of Indian Penal Code, 1860.

8. In the light of this, I do not find merits in the arguments advanced by learned counsel(s) for aforesaid petitioners. There is no convincing ground for quashing complaint, Annexure P-1, as well as

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summoning order dated 15.02.2019, Annexure P-2. Consequently, aforesaid petition(s) filed by petitioner(s) are accordingly dismissed.

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

06.09.2024

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(AMARJOT BHATTI)
JUDGE

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