

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

214

CRM M-53334 of 2023

Date of Decision: 24.04.2024

Gurcharan Singh

...Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Mitul Rana, Advocate, for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

Ms. Sarika Gupta, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of the Cr.P.C. with a prayer to set aside the summoning order dated 11.12.2017 (Annexure P-2) passed by the Court of Judicial Magistrate 1st Class, Mukerian, in a complaint bearing No. COMI/103/2015 titled as **“Harveer Singh Vs. Gurcharan Singh and another”** under Sections 387, 380, 336, 323, 341, 342 and 506 IPC and Sections 25 and 27 of the Arms Act (Annexure P-1), whereby, the petitioner was ordered to be summoned for the commission of offences punishable under Sections 380, 323, 341, 342 and 506 of IPC and Section 27 of Arms Act. A further prayer has been made to set-aside the impugned order dated 12.09.2023 (Annexure P-4) passed by the Additional Sessions Judge, Hoshiarpur,

whereby, the revision petition filed by the present petitioner was ordered to be dismissed.

2. Learned counsel for the petitioner contended that on the basis of the statement made by the present petitioner, one FIR No. 8 dated 11.03.2015 was ordered to be registered against the respondent No. 2/complainant at Police Station Hajipur, District Hoshiarpur and he was tried in the said case. Ultimately, the Court of Additional Sessions Judge, Hoshiarpur convicted the respondent No. 2/complainant under Section 27 of the Arms Act vide judgment dated 02.01.2017. In the meantime, on 01.07.2015, respondent No. 2/complainant instituted the present complaint (Annexure P-1) against the petitioner by alleging that on 11.03.2015, the petitioner had forcibly picked double barrel gun alongwith the cartridges from Almirah of respondent No. 2 and started firing in the air by opening the door and fired 7/8 cartridges. The family members reached at the spot and later on, by concocting a story, the petitioner had falsely involved respondent No.2 in FIR 8/2015. Learned counsel further contended that while filing the complaint (Annexure P-1), the respondent No. 2 had concealed the fact that respondent No. 2 was already facing criminal prosecution with regard to the same allegations and even before the passing of the summoning order on 11.12.2017, he had already been convicted on 02.01.2017 by the Court of Additional Sessions Judge, Hoshiarpur. Even, in the complaint (Anenxure P-1), the respondent No. 2 had concealed the

lodging of the FIR by the present petitioner against him. Apart from that, the Magistrate had not complied with the mandatory provisions of Section 210 Cr.P.C. and since one FIR already stood registered with regard to the same occurrence, it was incumbent on the trial Court to stay the proceedings and to call for a report from the police. The petitioner challenged the summoning order (Annexure P-2) dated 11.12.2017 passed by the Court of Judicial Magistrate 1st Class, Mukerian. However, vide the impugned order dated 12.09.2023, the Additional Sessions Judge, Hoshiarpur dismissed the revision petition filed by the present petitioner. Learned counsel further contended that the summoning order (Annexure P-2) passed by the Judicial Magistrate 1st Class and the order (Annexure P-4) passed by the Revisional Court are legally unsustainable.

3. On the other hand, learned counsel appearing on behalf of respondent No. 2 submitted that there was no concealment of fact on the part of respondent No. 2/complainant. The respondent had clearly mentioned in the complaint (Annexure P-1) that he was put behind the bars without any fault and an inference could easily be drawn from the said averment that the FIR was registered against the complainant also. She further contended that the petitioner had already filed a revision petition before the Court of Sessions Judge, Hoshiarpur and the petition filed by the present petitioner is not maintainable before this Court.

4. I have heard learned counsel for the parties and perused the record.

5. In the present case, the petitioner had already got FIR No. 8 dated 11.03.2015 registered at Police Station Hajipur, District Hoshiarpur against respondent No.2/complainant with regard to the same occurrence. After about 4 months of the occurrence, the respondent No.2/complainant had filed the impugned complaint (Annexure P-1) before the Court of Judicial Magistrate 1st Class, Mukerian, against the present petitioner and Satnam, co-accused. From a perusal of the complaint (Annexure P-1), it is evident that the respondent No. 2 had nowhere stated in the complaint that he was being prosecuted with regard to the same occurrence by the present petitioner. Further, there is not even vague reference in the complaint with regard to the registration of FIR No. 8/2015 and this amounts to serious concealment on the part of respondent No.2. Even, vide judgment dated 02.01.2017, the respondent No. 2 was convicted under Section 27 of the Arms Act by the Court of Additional Sessions Judge, Hoshiarpur and, thereafter also, the matter remained pending before the Judicial Magistrate 1st Class, Hoshiarpur and, ultimately, the impugned order dated 11.12.2017 (Annexure P-2) was passed by the Judicial Magistrate Mukerian. Again, for the period of more than 01 year, the respondent No. 2 did not inform the Court of Judicial Magistrate 1st Class Mukerian with regard to his conviction by the trial Court with regard to the same occurrence. Thus, it is apparent

that the respondent No. 2 was well aware of the registration of criminal case against him and his conviction by a competent Court with regard to the same occurrence, still these facts were not brought to the notice of the Judicial Magistrate 1st Class, Mukerian and it is clear case of suppression of material facts, which were within the special knowledge of the respondent No. 2. Anyone, who takes recourse to method of suppression in a Court of law, is, in actuality, played with the Court, and the maxim, “*supressio veri*”, expression faisai, i.e., suppression of truth is equivalent to the expression of falsehood, gets attracted. This Court is compelled to say that there has been a calculated concealment of most material fact by respondent No. 2 and respondent No. 2 tried to gain advantage by such factual suppression. When the impugned summoning order has been obtained by respondent No. 2 by practicing fraud and suppressing material fact before a Court of law to gain advantage, the said order cannot be allowed to continue to do complete justice to the parties. Even, the said fact was brought to the notice of the Revisional Court by the present petitioner, however, the revisional Court completely overlooked the said submissions and the impugned orders are legally unsustainable only on this ground.

6. Apart from that, in the present case, the Magistrate had chosen to proceed with the private complaint, without following the mandate of Section 210 Cr.P.C. In fact, the investigation/trial were pending in relation to the same offence and, in such a situation, the Magistrate

was under a legal duty to stay the proceedings of such inquiry/trial and to call for a report on the matter from the police officers conducting the investigating. In the present case, admittedly, the FIR was pending and, subsequently, the respondent No. 2 was tried by the court of Additional Sessions Judge, Hoshiarpur, but the complainant never brought the said facts to the knowledge of the Magistrate. Thus, the Magistrate also could not follow the due process of law, due to suppression of material facts by the respondent No. 2 and serious prejudice has been caused to the present petitioner also. Thus, the impugned summoning order dated 11.12.2017 (Annexure P-2) passed by the trial Court and the order dated 12.09.2023 (Annexure P-4) passed by the Revisional Court are legally unsustainable.

7. In view of above discussion, the summoning order dated 11.12.2017 (Annexure P-2) passed by the Court of Judicial Magistrate 1st Class, Mukerian and order dated 12.09.2023 (Annexure P-4) passed by the learned Additional Sessions Judge, Hoshiapur, are ordered to be quashed qua the present petitioner.

24.04.2024	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No