



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-47188-2024 in/and
CRM-M-59482-2023
Date of decision: 02.12.2024

Dinesh Sarna

.....Petitioner

Versus

Vasu Pathak

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ishan Gupta, Advocate
for the petitioner.

Ms. Harmanjot Kaur, Advocate for
Mr. Navkiran Singh, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

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Prayer in the instant application is for advancing the date
of hearing of main case-**CRM-M-59482-2023** from 12.12.2024 to some
early date.

Notice of the application.

Learned counsel appearing for the respondent accepts
notice of the application.

In view of the reasons mentioned in the application, the
same is allowed and the date of hearing of the main case-**CRM-M-59482-2023** is advanced from 12.12.2024 to today itself.

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1. The petitioner is seeking quashing of Complaint bearing



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No.COMA/1/2022 dated 29.03.2022 titled as 'Vasu Pathak Vs. Ranjit Singh and others' under Sections 420, 120-B of the IPC, Sections 21, 21-B, 25, 27, 27-A, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), Sections 25, 27, 54, 59 of the Arms Act read with Sections 7, 8, 9, 13(2) of the Prevention of Corruption Act, 1988 pending in the Court of learned Judge, Special Court, Kapurthala arising out of the allegations which were part of FIR bearing FIR No.0034 dated 09.02.2022 (Annexure P-2) under Sections 21, 25, 27, 27(a), 29 of the NDPS Act, registered at Police Station Special Task Force, SAS Nagar along with all consequential proceedings arising therefrom, including summoning order dated 27.10.2023 (Annexure P-8), and order dated 14.11.2023.

2. Learned counsel for the petitioner argued that the impugned summoning order dated 27.10.2023 (Annexure P-8) and order dated 14.11.2023 (Annexure P-11) vide which the petitioner was summoned, are legally flawed and cannot be sustained. It has been contended that, while taking cognizance of the case based on a private complaint, the learned trial Court overlooked the following critical legal requirements :

(i) that Section 19 of the PC Act explicitly bars a Court from taking cognizance of offences alleged against a public servant without prior sanction from the Competent Authority. In the present case, such requisite sanction was not obtained from the relevant Authority before proceeding;

(ii) that Section 36-A (1)(d) of the NDPS Act empowers only



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Special Courts to take cognizance of offences under the NDPS Act based on either (a) police report, or (b) a complaint filed by an officer duly authorized by the Central or State Government. In the present case, the trial Court proceeded on the basis of a private complaint, which does not satisfy the statutory conditions laid out under Section 36-A (1)(d) of the NDPS Act.

(iii) that similarly for offences under the Arms Act, the trial Court was not authorized to take cognizance without prior sanction from the concerned District Magistrate. In the absence of the sanction, any cognizance taken by the trial Court stands procedurally and legally flawed.

3. Learned counsel for the respondent submits that FIR has already been registered in connection with the same allegations presented in the private complaint. It has been further submitted that as per the provisions of Section 210 of the Cr.P.C./210 of the BNSS, when a private complaint and an FIR are based on identical facts/allegations, the trial Court is required to call for a police report on the FIR and thereafter the proceedings are consolidated so as to ensure that both the trial on the basis of the private complaint and the trial based on the FIR are conducted as a single, unified proceeding. It has also been asserted by the learned counsel for the respondent that the trial Court, by not obtaining this report under Section 210 of the Cr.P.C./210 of the BNSS and not consolidating the cases, has failed to adhere to procedural requirements.

4. At this juncture, both counsel for the petitioner as well as



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respondent/complainant are *ad idem* that the matter should be remanded to the trial Court for passing of a fresh order, taking into account the aforementioned legal submissions.

5. I have heard learned counsel for the parties and have perused the relevant material placed on record.

6. Accordingly without going into the merits of the case, the instant petition stands disposed of and impugned summoning order dated 27.10.2023 (Annexure P-8) and order dated 14.11.2023 (Annexure P-11) are hereby set aside. The matter is remanded to the concerned Special Court with the directions to pass a fresh order in accordance with the provisions of law.

02.12.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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