



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-7460-2025 (O&M)
Date of decision : 05.03.2025

Sunder Dass ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Amit Arora, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of Criminal Complaint bearing No. 45/82021, titled as ***Kala Singh vs. Harwinder Singh and others***, filed by respondent No. 2 under Sections 323, 326, 295-A, 447, 148 and 149 of IPC, pending before the Court of learned Judicial Magistrate First Class, Patti, as well as for quashing of order dated 24.01.2024, passed by the said Court, whereby the petitioner has been summoned to face trial for commission of offences punishable under Sections 323, 326, 506, 148 and 149 of IPC.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint had been filed by respondent No. 2/complainant on the allegations that on 10.07.2020, the present petitioner along with co-accused Harwinder Singh, Davinder Singh, Rajwinder Singh, Ripanpreet Singh @ Bobby, Hardial Singh and Sukhbir Singh had criminally trespassed into his agricultural land. All of them were armed with weapons.



Accused Hardial Singh had made an exhortation to teach a lesson to him for stopping them from discharge of irrigation water from his land. Then they opened assault upon him and caused injuries with their respective weapons, which they were carrying. They also pulled his hair, thereby causing hurt to his religious sentiments. The clamour raised by the complainant attracted his son Lakhwinder Singh and nephew Harjinder Singh, who rescued him and thereafter, the petitioner and co-accused had fled away from the spot.

3. The complainant expired before recording of his statement before the learned trial Court. After his death, his son Lakhwinder Singh was permitted to proceed with the complaint as complainant. In preliminary evidence, 04 witnesses were examined and thereafter, preliminary evidence was closed.

4. After considering the preliminary evidence produced on record, the learned trial Court, vide order dated 24.01.2024, observed that a *prima face* case for commission of offence punishable under Sections 323, 326, 506, 148 and 149 of IPC was made out and issued process against the petitioner and co-accused.

5. It is argued by learned counsel for the petitioner that the impugned summoning order is not sustainable in the eyes of law as while passing the same, the learned trial Court did not apply its judicious mind. A cryptic and non-speaking order had been passed. It is further argued that as per the allegations in the complaint itself, Lakhwinder Singh and Harjinder Singh, who are son and nephew of the original complainant Kala Singh, respectively, had reached at the spot after hearing rescue alarm raised by the latter. However, in



their respective sworn depositions, CW-1 Lakhwinder Singh and CW-2 Harjinder Singh deposed that they along with the victim were present when the petitioner and other co-accused had opened assault upon Kala Singh. It is submitted that the statements of these witnesses are false on the face of the record as according to the allegations in the complaint itself, they were not the eye-witnesses to the occurrence. It is submitted that after the death of original complainant Kala Singh, the proceedings of the complaint have been ordered to be continued only with a view to humiliate and harass the petitioner, though the complaint should have been abated with the death of the original complainant and should have been dismissed. It is further argued that excluding the statement of CW-1 Lakhwinder Singh and CW-2 Harjinder Singh, which could not be relied upon at all, there is no other *prima facie* evidence on record to prove the involvement of the petitioner in the commission of offence for which he has been summoned. Therefore, the continuation of the proceedings in the impugned complaint would be nothing but an abuse of process of the Court. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned complaint as well as the summoning order including all the subsequent proceeding arising therefrom are liable to be quashed.

6. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

7. The petitioner has been summoned by the learned trial Court to face trial for commission of offences punishable under Sections 323, 326, 506, 148 and 149 of IPC. Undisputedly, a Magistrate has power to take cognizance of an offence under the provisions of Section 200 of Code of Criminal



Procedure (*for short 'the Code'*) in a private complaint and to issue the process when the material produced on record, in his opinion, is sufficient to do so. The sustainability of exercise of such power, is to be considered in view of the legal and factual position. The Hon'ble Supreme Court laid down the golden standard for summoning an accused in its decision in ***M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others, (1998) SCC (Criminal) 1400***, wherein it was observed 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 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 the evidence that would also be sufficient for the complainant to succeed in bringing home the charge as against 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. The Magistrate has to carefully scrutinize 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.

8. 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 in a summons case or in a warrant case. The sine qua non for exercising the power under Section 204 of the Code to issue process, is the subjective satisfaction regarding the existence of sufficient ground for proceeding. In ***Mahmoodul Rehman and others Vs. Khazir Mohammad Tunda and others, (2015) 12 SCC 420***, the Hon'ble Supreme Court held thus:-

“22.....The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court.....In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction.....To be called to appear before criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

9. In ***Sunil Bharti Mittal Vs. CBI (2015) 4 SCC***, the Hon'ble Supreme Court interpreted the expression “sufficient ground for proceeding”



and held that there should be sufficient incriminating material against the accused concerned before proceeding under Section 204 of Cr.P.C. It was observed as follows:-

“the words ‘sufficient ground for proceeding’ appearing in Section 204 are of immense importance. These words amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside, if no reason is given therein while coming to the conclusion that there is *prima facie* case against the accused, though the order need not contain detailed reasons. A fortiori, the order would not be bad in law, if the reason given turns out to be *ex-facie* incorrect.”

10. Keeping in view the above discussed position of law with regard to powers of a Magistrate to issue process in a private complaint, it is to be considered as to whether the impugned complaint and summoning order are liable to be set aside on the grounds as prayed for by the petitioner.

11. As mentioned above, the petitioner has mainly sought quashing of the complaint as well as summoning order on that grounds that the original complainant Kala Singh had died before recording his statement before the learned trial Court and the case rests only upon the statements of his son Lakhwinder Singh and nephew Harjinder Singh. The contention as raised by the petitioner is that it was specifically alleged in the complaint that the son and nephew of the original complainant had reached at the spot after the petitioner and other co-accused had already assaulted him. Therefore, their sworn depositions could not be taken into consideration even *prima facie* for the



purpose of issuing process against the petitioner as they are false on the face of the record. This argument appears to be quite attractive, however, this Court is unable to accept the same at this stage, since on a perusal of the impugned summoning order, it is apparent that the learned trial Court applied its mind to the facts of the case and after examining the entire allegations as made in the complaint as well as the evidence, both oral and documentary in respect thereof, arrived at a conclusion that there was a *prima facie* case on record to summon the petitioner and others as accused and only after considering that there were sufficient grounds for proceeding ahead, summons have been issued against the petitioner. As already mentioned above, the subjective satisfaction regarding the existence of sufficient ground for proceeding is *sine qua non* for exercising the power under Section 204 of the Code to issue process, which has been exercised by the learned Magistrate. As such, I see no reason to quash the impugned complaint or the summoning order. Accordingly, finding no merit in the present petition, the same is hereby dismissed.

12. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

05.03.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes