

CRM-M-39376-2013 (O&M) &
CRM-M-39181-2013 (O&M)

[1]

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

CRM-M-39376-2013 (O&M) &
CRM-M-39181-2013 (O&M)
Reserved on 20.11.2024
Date of decision: 19.02.2025

CRM-M-39376-2013 (O&M)

Baljinder Kaur

...Petitioner

Versus

Balbir Singh

...Respondent

AND

CRM-M-39181-2013 (O&M)

Baljinder Kaur

...Petitioner

Versus

Harinder Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Kulvir Narwal, Advocate,
Mr. Abhisar Chaudhary, Advocate and
Ms. Geetanjali Bhatia, Advocate for the petitioner(s).

None for the respondent(s).

KARAMJIT SINGH, J.

1. Both the petitions are taken up together for final disposal, since they are interconnected being arising out of the common judgment dated 23.08.2013 passed by the Court of learned Sessions Judge, Ludhiana, in two connected revision petitions.

2. Petitioner/complainant Baljinder Kaur has filed both these petitions under Section 482 Cr.P.C seeking quashing of common order

dated 23.08.2013 (Annexure P-4) passed by the Court of learned Sessions Judge, Ludhiana in Criminal Revision Nos.150 dated 28.02.2012 titled as Balbir Singh Vs. Baljinder Kaur and 20 dated 23.11.2011 titled Harinder Kaur Vs. Baljinder Kaur whereby the summoning order dated 23.07.2011 (Annexure P-2) passed by the Court of Judicial Magistrate Ist Class, Ludhiana in a criminal complaint titled Baljinder Kaur Vs. Balbir Singh and others (Annexure P-1) was set aside and the criminal complaint was remanded back to the trial Court with a direction to pass the order afresh.

3. The brief facts of the case of petitioner/complainant are that petitioner Baljinder Kaur is daughter of Babu Singh, a NRI. Respondent Balbir Singh (in CRM-M-39376-2013) is son of said Babu Singh, while respondent Harinder Kaur (in CRM-M-39181-2013) is wife of Balbir Singh. Babu Singh owned immovable property in the area of Ludhiana. Babu Singh died in year 2008 in United Kingdom leaving behind 4 sons namely Balbir Singh (respondent), Sukhdev Singh, Sukhdarshan Singh @ Darshan Singh and Paramjit Singh and two daughters namely Baljinder Kaur (petitioner) and Baldev Kaur. Except Sukhdev Singh all the children of Babu Singh are settled in United Kingdom. Sukhdev Singh was looking after the entire properties of his father Babu Singh, situated in District Ludhiana. Babu Singh died intestate. However, Balbir Singh got mutated land owned by Babu Singh in Villages Alamgir and Khanpur, District Ludhiana in favour of all the sons of Babu Singh including himself, on the basis of alleged 'Will' dated 09.03.1999, at the back of the daughters of Babu Singh including petitioner herself. In the said proceedings, Balbir Singh was represented by his attorney. The 'Will' in question dated

09.03.1999 is a fake document which was never executed by Babu Singh. Even, the original of the said 'Will' was never produced before the revenue officials. On the basis of the said cheating and forgery, petitioner filed criminal complaint Annexure P-1 under Sections 420, 467, 468, 471 and 120-B IPC against Balbir Singh, Harinder Kaur, Surender Bir Singh, Surender Kaur and Manpreet Singh.

4. In preliminary evidence, Baljinder Kaur herself stepped into witness box as CW-1 and also examined CW-2 Karamjit Singh her attorney and tendered documents i.e. certified copy of mutation No.5390 of Village Khanpur Ex.C-1, certified copy of mutation No.6910 of Village Alamgir Ex.C-2, report of Sub Registrar, Ludhiana (East) Ex.C-3, photocopy of power of attorney in favour of Karamjit Singh Ex.C-4, copy of rapat roznamcha No.621 dated 26.05.2009 Ex.C-5, copy of rapat roznamcha No.543 dated 10.07.2009 Ex.C-6, copies of jamabandis Ex.C-7, Ex.C-8 and Ex.C-9, affidavit of Karamjit Singh Ex.C-10, certified copy of affidavit submitted by Balbir Singh Mark-A, death certificate of Babu Singh Mark-B and photocopy of registered 'Will' dated 09.03.1999 having Vasika No.1948 Mark-C.

5. On the basis of the aforesaid preliminary evidence led by petitioner Baljinder Kaur, the Court of Judicial Magistrate Ist Class, Ludhiana passed order dated 23.07.2011 (Annexure P-2) with direction to summon all the accused including Balbir Singh and Harinder Kaur to face trial under Sections 420, 467, 468, 471 and 120-B IPC, in criminal complaint (Annexure P-1).

6. Being aggrieved, respondent(s) Balbir Singh and his wife

Harinder Kaur filed two separate criminal revision petitions in the Court of learned Sessions Judge, Ludhiana. Both the said revision petitions were disposed of by the said Court vide its composite order dated 23.08.2013 Annexure P-4 and summoning order dated 23.07.2011 Annexure P-2 passed by the Court of Judicial Magistrate Ist Class, Ludhiana was set aside and the case was remanded back to the Court of trial Magistrate with following direction:-

“to pass afresh order by discussing the ingredients of the offences against all the revisionist. In other words, in the given circumstances, the trial Magistrate is called upon to pass a speaking order. He may, if so desires call for other evidence including the explanation of the revenue authorities as to whether the ‘Will’ has been got registered with them or as to whether the same has been lost.”

7. The petitioner being not satisfied by the aforesaid order dated 23.08.2013 (Annexure P-4) passed by the Court of learned Sessions Judge, Ludhiana has filed the afore-titled two separate petitions i.e. present petition and CRM-M-39181-2013.

8. In response to notice of motion, Mr. Parteek Mahajan, Advocate appeared on behalf of respondent-Balbir Singh while Mr. R.K. Dhiman, Advocate appeared on behalf of respondent-Harinder Kaur.

9. Reply filed on behalf of the said respondent(s) was taken on record along with documents Annexure R-1 to Annexure R-5. However, subsequently, there was no representation on behalf of respondent(s).

10. The counsel appearing on behalf of the petitioner has argued that there was no illegality or perversity in the summoning order dated 23.07.2011 Annexure P-2 passed by the Court of Judicial Magistrate Ist Class, Ludhiana and thus, there was no occasion for the revisional Court to

interfere in the said order. It is further submitted that no record with regard to execution and registration of 'Will' dated 09.03.1999 is available with the concerned government authorities. To this effect, the petitioner received information from the concerned government authorities and the said information received from the office of Sub Registrar concerned (Ex.C-3) was placed on record by the petitioner in her preliminary evidence. It has been further argued that from the perusal of the said information given by the concerned government department coupled with the statements of Baljinder Kaur and her attorney Karamjit Singh, it was *prima facie* established on the record that the 'Will' in question purported to be executed by Babu Singh in favour of respondent Balbir Singh dated 09.03.1999, never came into existence and thus, making it amply clear that the mutations if any sanctioned in favour of Balbir Singh and his brothers with regard to estate of Babu Singh, on the basis of aforesaid forged 'Will' are also illegal, null and void. The counsel for the petitioner has further submitted that the fact regarding fakeness of 'Will' dated 09.03.1999 is also proved from the judgment dated 27.10.2017 passed by the Court of Civil Judge (Junior Division), Ludhiana in civil suit No.199 dated 27.11.2009 (CIS No.4272/2013) titled Balbir Singh Chahal Vs. Sukhdev Singh and others, wherein the aforesaid 'Will' dated 09.03.1999 was disbelieved by the civil Court. The counsel for the petitioner has further argued that the summoning order dated 23.07.2011 Annexure P-2 was passed by the trial Magistrate in accordance with law after taking into consideration all the facts and circumstances of the case and the same deserves to be restored. In support of his contentions, the counsel for the petitioner has placed reliance

on the decision of Hon'ble Supreme Court in ***Nupur Talwar Vs. Central Bureau of Investigation and Another*** reported in ***AIR 2012 SC 1921*** wherein it was observed that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order. The counsel for the petitioner has also made reference to the judgment of Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and Anr AIR 2012 SC 1747*** wherein also it was held that Section 204 does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued.

11. I have considered the submissions made by counsel for the petitioner and gone through the record.

12. The Hon'ble Apex Court has time and again asserted that the order of issuance of process is not an empty formality. The summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The Magistrate while ordering summons has to record his satisfaction about a *prima facie* case against the accused. In this regard, reference is made to the decisions of Hon'ble Supreme Court in ***Pepsi Food Ltd. Vs.***

Special Judicial Magistrate (1998) 5 SCC 749, Lalan Kumar Singh and others Vs. State of Maharashtra 2022 LiveLaw (SC) 833 and M/s J.M Laboratories and others Vs. State of A.P and another 2025 LiveLaw (SC) 128.

13. Now reverting back to the facts of the present case, in order to *prima facie* establish the fakeness of 'Will' dated 09.03.1999 registered in the office of Sub Registrar, Ludhiana having document No.1948, petitioner examined CW-2 Karamjit Singh and herself appeared in the witness box as CW-1 and also tendered documents Ex.C-1 to Ex.C-9 and Mark-A to Mark-C. Petitioner simply reiterated the averments made in the complaint Annexure P-1 and stated that no such 'Will' as propounded by his brother Balbir Singh was ever executed by their father Babu Singh and the said 'Will' is a forged document. Even her attorney CW-2 Karamjit Singh corroborated her statement. CW-2 also made statement that he moved application to get certified copy of 'Will' in question and the office of Sub Registrar concerned gave its report that no such document is available in their record and the said report given by Sub Registrar concerned is Ex.C-3. From the perusal of summoning order dated 23.07.2011 (Annexure P-2), it appears that the trial Court primarily relied upon aforesaid report Ex.C-3 while coming to conclusion that there is a *prima facie* case made out against the accused under Sections 420, 467, 468, 471 and 120-B IPC.

14. It is apparent that no official from the office of Sub Registrar concerned was examined during the preliminary evidence in order to have *prima facie* satisfaction of the Court that no such 'Will' dated 09.03.1999 was ever executed or got registered by Babu Singh, who later on died in

year 2008, as is evident from his death certificate Mark-B. From the perusal of documents Annexure R-1 to Annexure R-5 placed on record by respondent(s), it transpires that respondent Balbir Singh through his wife/attorney Harinder Kaur filed one complaint with District Administration regarding misplacing/missing of registered 'Will' dated 09.03.1999 executed by Babu Singh. The matter was inquired into by Additional Deputy Commissioner, Ludhiana and during said inquiry, statements of the concerned officials were also recorded. Additional Deputy Commissioner gave his inquiry report Annexure R-2 with following observations:-

"Apart from this, the volume (in which said 'Will' was affixed) was inspected and it was found that the volume was bound with a tag and its earlier pages are intact. The documents up to Sr. No.1946 are absolutely intact and thereafter, two documents are missing. Document No.1949 has been taken out. From the perusal of the record, it appears that these documents cannot be taken out without human efforts. Remaining all documents are intact and are tagged. The 'Wills' after document No.1969 are damaged by termite but it is pertinent to mention here that no page out of them is out of the volume, rather they are tagged. But in this case, the collusion of any particular official has not come to the light in clear terms.

Therefore, keeping in view the above, it would be appropriate that concerned Sub Registrar be directed to lodge a complaint with the police department regarding tearing of this document from the record and while protecting the right of complainant (respondent herein), certified copy taken by him of the relevant document (document No.1948 dated 09.03.1999) be pasted at proper place in the record.

Report is submitted for further appropriate action and information."

15. It is also pertinent to note that on the basis of aforesaid inquiry report submitted by Additional Deputy Commissioner, Ludhiana, respondent Balbir Singh filed criminal complaint against the present petitioner and other persons wherein the Court of Chief Judicial Magistrate, Ludhiana passed summoning order dated 23.03.2015 (Annexure R-3)

against the petitioner and some other accused persons.

16. From the perusal of Annexure R-4, it is evident that respondent Balbir Singh being NRI lodged one complaint with Punjab State Commission for NRIs and the said Commission passed the following order dated 31.03.2015:-

“This Commission strongly recommends to initiate the immediate action against the culprits not only for registration of the FIR for removal of the ‘Will’ dated 09.03.1999 but also to take action against all of those who have tried to hush-up the matter.”

17. This Court is taking into consideration the aforesaid documents placed on record on behalf of the respondent(s), in the interest of justice and otherwise also with coming into force of Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, it is pertinent to note that proviso to Section 223 of BNSS 2023 mandates that an opportunity of hearing is to be given to the proposed accused, before the Magistrate takes cognizance of the private complaint. The intent of the legislature is that the aforesaid statutory provision affords an opportunity to the proposed accused to put forth his case at the outset and prevent the Court from wrongly taking cognizance of the private complaint in his absence.

18. Having regard to the aforesaid facts and circumstances of the case, this Court is of the view that the accused ought not to have been summoned by the learned trial Court just on the basis of the oral statements of complainant and her attorney, without seeking any further report with regard to authenticity of report Ex.C-3 submitted by the Sub Registrar concerned. It being so, the Court of learned Sessions Judge, Ludhiana in its order dated 23.08.2013 Annexure P-4 rightly observed that the trial Court if

so desires call for other evidence including the explanation of the revenue authorities as to whether the 'Will' was registered with them or whether the same has been lost.

19. In the light of the settled position of law as discussed above, coupled with the facts and circumstances of the instant case, this Court is of the view that there is no illegality or perversity in the impugned order dated 23.08.2013 Annexure P-4 passed by the Court of Sessions Judge, Ludhiana.

20. Consequently, both the petitions are dismissed being devoid of merits. The petitioner is directed to appear before the learned trial Court within a period of next 30 days with direction to the trial Court to proceed ahead in criminal complaint Annexure P-1 in accordance with the directions given by the learned Sessions Judge, Ludhiana vide its order Annexure P-4 dated 23.08.2013. The original summoned record be returned immediately.

21. Any observations made herein above are not to be construed as an expression of opinion on the merits of the case and are restricted only for the purpose of disposal of the present petition(s).

19.02.2025
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No