

2025:PHHC:047150



CRM-M-18059-2025 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

135

CRM-M-18059-2025 (O&M)

Date of decision: 04.04.2025

Jagmail Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Harpreet Maini, Advocate
for the petitioner.

MANISHA BATRA, J (Oral)

1. The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) seeking quashing of complaint bearing No. COMI-17-2021, titled as ***Jaswinder Kaur vs. Jagmail Singh and others***, pending before the Court of learned Sub Divisional Judicial Magistrate, Jaitu as well as for quashing of order dated 17.01.2025, passed by the said Court, whereby the petitioners had been ordered to be summoned as accused to face trial for commission of offences punishable under Sections 148, 323, 427, 452, 506 read with Sections 149, 120-B of IPC.

2. The aforementioned complaint has been filed by respondent



No. 2/complainant against the present petitioners on the allegations that on 21.12.2020, they had assaulted the complainant and her son and criminally intimidated them by extending threats to kill them. The matter was reported to the police but no action was taken, thereby compelling the complainant to file the impugned complaint.

3. In preliminary evidence, the complainant examined eight witnesses, besides placing reliance upon certain documentary evidence. After going through the evidence and considering the contentions as raised, the learned trial Court passed the impugned summoning order, thereby calling upon the petitioners to appear before the Court and face trial. Feeling aggrieved, the present petition has been filed by the petitioners.

4. It is argued by learned counsel for the petitioners that the aforementioned complaint as well as the summoning order are not sustainable in the eyes of law as on the basis of a complaint previously filed, a Calendra under Section 107 and 150 of Cr.P.C. was presented against the petitioners before the learned Sub Divisional Judicial Magistrate and they were released on furnishing bonds. Subject offences are not made out against the petitioners. The impugned order has been passed after a gap of three years and three months from the date of the alleged incident. Therefore, it is urged that the impugned complaint as well as the summoning order are liable to be quashed.

5. I have heard learned counsel for the petitioner and have also



gone through the material placed on record carefully.

6. At the outset, it is to be considered as to whether, the prayer made by the petitioners for quashing of complaint can be considered by this Court in a petition filed under Section 528 of BNSS. The Hon'ble Supreme Court has laid down certain conditions whereby the complaint can be quashed by invoking the powers under Section 482 of Cr.P.C. (*which is pari materia with Section 528 of BNSS*) above mentioned Section in a case reported as ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736*** which are as follows:-

- (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .



(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

7. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424*** and in ***M/s Pepsi Food Ltd's case (supra)*** wherein it was observed that a petition filed under Section 482 of Cr.P.C. for quashing an order summoning the accused is maintainable.

8. Similarly, in a recent judgment dated 22.02.2024 titled as '***Vikas Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261***', the Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of Cr.P.C.

9. In view of the above discussed proposition of law, it is explicit that a complaint can be quashed and an order of issuance of summons can be interfered with by this Court by invoking powers under Section 528 of BNSS, however at the same time, it is also to be kept in mind that the inherent jurisdiction under this provision is to be exercised sparingly and with caution only when such exercise is justified by the test specifically laid down in the section itself. It is well settled proposition of law that an



appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power and the inherent powers so vested do not confer any arbitrary jurisdiction upon the High Court to act according to whims and caprices.

10. On applying the above mentioned proposition of law to the facts of the present case, it is to be seen as to whether the complaint as lodged by the respondent/complainant and the impugned summoning order are liable to be quashed or not. The main thrust of the arguments address by learned counsel for the petitioner is that a Calendra under Section 107 and 150 of Cr.P.C. was presented against the petitioners before the learned Sub Divisional Judicial Magistrate and they were released on furnishing bonds. Even the present dispute relates to a petty quarrel which took place in the year 2020 regarding throwing of water on the passage, which was compromised between the parties in the year 2021 but the complainant had filed still filed the impugned complaint. These contentions cannot be accepted at this stage. Learned Magistrate after *prima facie* satisfying himself that there was sufficient ground for proceeding against the petitioners, had issued process. He was not required to make a deeper probe at the time of issuance of process. More so, it is evident that the grounds of challenge that has been set up by the petitioners is matter of defence at the trial and this Court while exercising its powers under Section 528 of BNSS cannot substitute the discretion exercise by the Magistrate on this point.

2025:PHHC:047150



CRM-M-18059-2025 (O&M)

-6-

11. Further as per Section 227 of BNSS (*which is pari materia with Section 204 of Cr.P.C.*) if in opinion of the Magistrate taking cognizance of an offence, there are sufficient grounds for proceeding, he shall issue summons for procuring the attendance in summons/warrants case. The *sine qua non* for exercising the power under this provision to issue process, is the subjective satisfaction regarding the existence of sufficient ground for proceeding. At that stage, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the material collected is adequate for supporting the conviction. For issuance of summons under Section 227 of BNSS, the expression used is “there is sufficient ground for proceeding” and detailed inquiry regarding merits/demerits is not required. Reference in this context can be made to ***Mahendra K.C. v. State of Karnataka, (2022) 2 SCC 129: (2022) 1 SCC (Cri) 401*** wherein the Hon’ble Supreme Court had observed that the test to be applied is whether the allegations in the complaint as they stand without adding or detracting the complaint *prima facie* established the ingredients of the offence alleged. At this stage, the Court cannot test the veracity of allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of the trial. As such, the first contention of the petitioner can not be accepted.

2025:PHHC:047150



CRM-M-18059-2025 (O&M)

-7-

12. In view of the discussion as made above, no ground has been made out to quash the complaint as well as the impugned summoning order . Accordingly, finding no merit, the petition is dismissed.

[MANISHA BATRA]
JUDGE

04.04.2025
Waseem Ansari

- | | | |
|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |