



203

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

CRM-M-42486-2016 (O&M)

Date of decision: 29.01.2025

Abhey Singh and another

....Petitioners

Versus

Sewa Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jai Vir Yadav, Senior Advocate with
Mr. Tarun Yadav, Advocate and
Ms. Parul Sharma, Advocate
for the petitioners.

None for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition is preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of complaint No. 683 dated 05.10.2010 (Annexure P-1) instituted under Sections 323, 325, 504, 506, 34 IPC and Section 133 Cr.P.C. as well as summoning order dated 07.02.2014 (Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Gurgaon whereby the petitioners have been summoned under Sections 323, 506 IPC.

2. Briefly, the facts, as alleged, are that the respondent-complainant worked as a technician with the company- Maruti and retired in the year 2001 by means of VRS. Using his savings, he purchased a plot bearing No. 133 in the year 2001 itself and constructed a house. The petitioners opened a service station in front of the said house, which has caused a lot of nuisance in the neighbourhood. To remedy the same, the residents of that locality requested the



petitioners to close down the service station, however, they refused. In order to harass the respondent, the petitioners started gathering sand in front of his house so as to block drainage. On 28.03.2007, when the respondent and his son tried to remove the same, the petitioners and their servant gave beatings to them. They also threw bricks at them causing injuries on the head and hands of the son of the respondent. Thereafter, on 19.09.2010, the respondent and his son were at their house when the petitioners, armed with *lathi*, came there and gave them beatings. About 2-3 days before this incident, a panchayat was also convened that yielded no results and the complaint(supra) was subsequently filed.

3. Learned Senior counsel for the petitioners *inter alia* contends that the learned trial Court has fallen into grave error by summoning the petitioners as well as one Devinder Singh to face trial for commission of offences under Sections 323, 506 IPC. The said Devinder Singh is shown to be the son of petitioner No.1, which is factually incorrect. In spite of the summoning order having been passed on 07.02.2014, the petitioners have not been served yet. The allegations made by the respondent against the petitioners are general and vague in nature. It is evident that the complaint(supra) has been filed as a counterblast to FIR No.140 dated 29.03.2007 registered under Sections 323, 325, 452, 506/34 IPC at Police Station DLF, Gurgaon by the petitioners against him and his son, in order to pressurize them to withdraw the same. In fact, it is a matter of record that the respondent was convicted under Section 323/34 IPC in the FIR(supra) vide judgment dated 29.03.2014 (Annexure P-3) passed by the learned Judicial Magistrate Ist Class, Gurgaon, however, he was released on probation.



4. Further, there is a considerable delay in lodging the complaint(supra) as the alleged incident pertains to 28.03.2007 and the allegations with regard to the incident on 19.09.2010 have merely been levelled in order to overcome the issue of limitation. As such, the summoning order dated 07.02.2014 has been passed in contravention of Section 468 Cr.P.C. as the limitation prescribed for the offence under Section 323 IPC is 01 year. Moreover, no MLR is available to establish any injury caused to the respondent or his son at the hands of the petitioner, either in the incident dated 19.09.2010 or 28.03.2007. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court in *Pepsi Food Ltd. vs. Special Judge Magistrate (1998) 5 SCC 749*.

5. Having heard learned counsel for the petitioners and after perusing the record of the case, it transpires that the complaint(supra) was instituted on 05.10.2010. The original incident narrated in the complaint pertains to 28.03.2007 while the latest event in the ongoing rivalry occurred on 19.09.2010. In order to establish the period of limitation, a perusal of Section 468 Cr.P.C. is imperative, which reads as follows:

Section 468. Bar to taking cognizance after lapse of the period of limitation.—

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;



(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

6. Since the petitioners have been summoned for alleged commission of offence under Section 323 IPC, which is punishable by imprisonment up to 01 year, Section 468(2)(b) Cr.P.C. would apply and the period of limitation shall be 01 year. A Constitution Bench of the Hon'ble Supreme Court in ***Sara Mathew Vs. Institute of Cardio Vascular Disease and Others 2014(14) RCR Criminal 10***, has categorically held that for the purpose of calculating the period of limitation under Section 468 of Cr.P.C., the relevant date would be the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance or the date of issuance of process by the Court. In the case at hand, the complaint was filed on 05.10.2010. However, the incident triggering the same occurred on 28.03.2007, therefore, taking cognizance to this extent is barred by Section 468 Cr.P.C.

7. Further, another incident was alleged to have occurred on 19.09.2010, which also finds mention in the complaint(supra) but a perusal of the same indicates that the entire emphasis has been laid on the incident pertaining to 28.03.2007 which begs the inference that the second incident (i.e. from 19.09.2010) was mentioned in the complaint(supra) merely as an attempt to overcome limitation qua the first incident (i.e. from 28.03.2007). This inference is buttressed by the fact that no corroboration in terms of medical evidence was produced with regard to the beatings given to his son and injuries suffered by the respondent-complainant. The MLR referred to in the



complaint(supra) was prepared by CW3- Dr. Neena, however it pertains to the incident from the year 2007. Moreover, an FIR(supra) was registered at the instance of the petitioners against the respondent. In fact, the respondent was convicted and released on probation in the case stemming from FIR(supra) vide judgment dated 29.03.2014 (Annexure P-3) passed by the learned Judicial Magistrate Ist Class, Gurgaon.

8. While the delay in setting the criminal law machinery into motion by lodging of complaint or registration of FIR is normally viewed by the Courts with suspicion as it undermines the integrity of the cause of action. Hence, it becomes imperative to satisfactorily and cogently explain the delay. A two Judge bench of the Hon'ble Apex Court in ***Thulia Kali vs. State of Tamil Nadu (1972) 3 SCC 393***, speaking through H.R. Khanna, J. observed as follows:

“12. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained...”

9. No doubt, the Court has the power to extend the period of limitation in certain cases under Section 473 Cr.P.C. i.e., if the Court, either on application or *suo moto*, if satisfied that given the facts and circumstances of the case, the delay has been properly explained or that taking cognizance is necessary to do so in the interest of justice. However, this provision is not relevant for our consideration since no such order has been passed by the learned Trial Court, condoning the delay and recording its reasons for doing so.



As such, the Court was barred from taking cognizance and initiating proceedings against the petitioner by virtue of Section 468 Cr.P.C.

10. In the facts and circumstances of the case, this Court strongly condemns the unscrupulous and unethical practice of launching criminal prosecution in order to harass the party opposite, out of personal spite and vengeance. The stream of justice must not be allowed to be clogged by ill-intended, vexatious proceedings which further burdens the already overworked Courts. The odious act of initiating criminal prosecution to hassle the party opposite to pressurize them to withdraw litigation is clearly an atrocious abuse of the process of law, which cannot go unchecked. The sanctity of the judicial process cannot be allowed to be smeared by letting ill-intentioned, resentful litigants to use it as an instrument of oppression.

11. A two Judge Bench of the Hon'ble Supreme Court in ***State of Haryana vs. Ch. Bhajan Lal AIR 1992 SC 604***, speaking through Justice Ratnavel Pandian, held as follows:

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section



156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.” (emphasis supplied)

Further still, a two Judge Bench of the Hon’ble Supreme Court in ***Mahmood Ali and others vs. State of U.P.2023 AIR SC 3709***, wherein, speaking through Justice J.B. Pardiwala, the following was observed:

*“12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under section 482 of the Code of Criminal Procedure, 1973 (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the **Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to***



look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under section 482 of the CrPC, 1973 or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”(emphasis added)

12. In view of the discussion above, this Court finds that the interest of justice will be served if the proceedings initiated against the petitioners are quashed. Accordingly, the present petition is allowed and complaint No. 683 dated 05.10.2010 (Annexure P-1) instituted under Sections 323, 325, 504, 506, 34 IPC and Section 133 Cr.P.C. is quashed *qua* the petitioners and summoning order dated 07.02.2014 (Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Gurgaon, is hereby set aside.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

29.01.2025

Neha

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