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210 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-32778-2023 (O&M)

Date of Decision: 20.01.2025

JASPAL SINGH @ JAMLA AND ANOTHER

...Petitioners

V/S

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunil Chadha, Sr. Advocate with
Ms. Devyani Sharma, Advocate for the petitioners.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of complaint bearing No. COMI/448/2018 dated 09.07.2018 filed under Sections 323, 452, 324, 341, 427, 229, 447, 148, 149, 506 and 34 of Indian Penal Code titled as "***Mandeep Singh @ Deepa Vs. Raj Kamal @ Kamal and Others***" pending before the Court of learned Judicial Magistrate Ist Class, Ludhiana and all subsequent proceedings arising therefrom including the summoning order dated 25.09.2019 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Ludhiana and also the judgment dated 25.04.2023 (Annexure P-7) passed by learned Additional Sessions Judge, Ludhiana, vide which the revision petition dated 18/20.02.2020 (Annexure P-8) filed against the aforesaid summoning order dated 25.09.2019 (Annexure P-5) has been dismissed.

2. In brief, the prosecution story is that accused namely Gurnam Singh and Gurdeep singh with the help of other accused persons have raised

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an illegal wall in the Govt. passage and complainant and his family members many time restrained the accused persons for committing such illegal acts by folding their hands many times and also requested them not to take law into their own hands, but the accused persons failed to accept his most genuine requests. Accused no. 7-Gurnam Singh is residing adjoining to his house. Accused Nos. 6 & 7 have constructed the wall and the said wall is creating difficulties for complainant and his family members. As such, he and his family members restrained the accused persons from raising the said wall. In fact, Gram Panchayat earlier also grabbed the property of villagers by illegal manner and converted the said lands into the Panchayat land as such, the complainant is against the said illegal work of the Gram Panchayat of his village, so the gram Panchayat is having enmity towards him and all the members of the Panchayats helped the accused persons. On 10.02.2018, at about 8:30AM, the accused persons in connivance with each other, illegally and forcibly started raising the wall in the Govt. Passage of *Shamlet Deh* and earlier he and his family members tried to restrain the accused persons for doing such illegal acts but the accused persons did not stop their illegal acts and at that time, his brother, Jaskaran Singh has moved one complaint before the SHO, PS Jodhan, DSP, Mullanpur Dakha and BDPO, Pakhowal regarding the illegal wall but the police has not taken any legal action against the said accused persons.

3. Learned senior counsel appearing for the petitioner *inter alia* contends that the trial Court has fallen into grave error by passing the summoning order against the petitioner in a mechanical manner and the impugned summoning order does not reflect any application of mind and



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nothing is discernible to indicate that the objective standards of reasons and justice have been followed. Admittedly, in the present case, the complainant suffered two injuries i.e. diffuse swelling and bruise and refers to the statement of the doctor and submits that following injuries were found:

“1. Bruise mark 10 cm long, 02 cm wide present over the ventral aspect of right arm 5 cm below elbow. It is obliquely placed. It is reddish in colour (advised X-ray).

2. Diffuse Swelling over the index finger of left hand. Local temperature of swelling were raised (advised X-ray). Weapon used was blunt.”

Learned senior counsel further submits that aforementioned two injuries were specifically attributed to Raj Kamal and Jasbir Singh and as many as 10 persons have been named by respondent No. 2 as accused along with some unknown persons by exaggerating the incident in which he is the real culprit. Learned counsel further submits that FIR(supra) was filed after a delay of 05 months and in fact, FIR No. 47 dated 01.03.2018 (Annexure P-1) was registered against the complainant under Sections 452, 323, 427, 148, 149 of Indian Penal Code and further no specific injury has been attributed to the petitioners and apart from the two injuries attributed to co-accused Raj Kamal and Jasbir Singh, no other injury was found on the person of respondent No. 2 and he further submits that petitioner No. 2 is more than 75 years of age and petitioner No. 1 has no concern with the property in dispute. Learned counsel further relies upon the judgments of Hon’ble Supreme Court in cases of Judgment dated 28.11.2022 passed in SLP (Crl.) No. 39 of 2022 titled as ***Ramesh Chandra Gupta Vs. State of U.P. and others, ii) M/s Indian Oil Corporation Vs. M/s NEPC India Ltd.***



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(2006 (3) RCR (Criminal) 740, iii) Madhavrao Jiwaji Rao Scindia Vs. Sambhajirao Chadrojirao Angre {1988 (1) RCR (Criminal) 565, iv) Rupan Deol Bajaj Vs. Kanwar Pal Singh Gill M/s NEPC India Ltd. (1995 (3) RCR (Criminal) 700, Central Bureau of Investigation Vs. Duncans Agro Industries Ltd. (1996 (3) RCR (Criminal) 60, vi) State of Bihar Vs. Rajendra Agrawalla (1996 (1) RCR (Criminal) 530, vii) Rajesh Bajaj Vs. State of NCT Delhi. (1992 (2) RCR (Criminal) 160, viii) Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E. Ltd. (2002 (2) RCR (Criminal) 122, ix) Hridaya Ranjan Prasad Verma Vs. State of Bihar (2000 (2) RCR (Criminal) 484, x) M. Krishnan Vs. M/s Vijay Kumar (2001 (4) RCR (Criminal) 405, xi) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Sharaful Haque (2004 (4) RCR (Criminal) 937, xii) G. Sagar Suri Vs. State of U.P. (2000 (1) RCR (Criminal) 707.

4. *Per contra*, learned counsel for respondent No. 2 submits that presence of petitioner No. 1 is duly proved on record as respondent No. 2 has produced the photographs, in which petitioner No. 1 was found to be present there and further the delay of 05 months in filing of the complaint(supra) has been duly explained as the jurisdictional police authorities has conducted a biased investigation and in spite of the fact that statement of respondent No. 2 was recorded immediately but the cross-version of respondent No. 2 was never registered by the police and as such, she has no other option than to file a private complaint.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that no specific role or injury has been attributed to the petitioners and even as per learned counsel



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for respondent No. 2, petitioner No. 1 was found present at the spot of occurrence and this only, in the considered opinion of this Court, is not sufficient to make the petitioners liable with the aid of Sections 148 and 149 of Indian Penal Code as they have no connection with the private dispute between the co-accused and respondent No. 2, additionally, respondent No. 2 has only suffered two injuries, which were simple in nature and they have been specifically attributed to co-accused Raj Kamal and Jasbir Singh and the summoning order has been passed in a mechanical manner without adverting to the facts and circumstances of the present case.

6. Further still, summoning an accused in a criminal case requires application of judicial mind. The *prima facie* assessment and finding with regard to the complicity of the accused must be recorded by the Magistrate before summoning them. A two Judge bench of the Hon'ble Supreme Court in *M/s Pepsi Foods Ltd. Vs. Special Judicial Magistrate (1998) 5 SCC 749*, speaking through Justice D.P. Wadhwa, opined as follows:

“26. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of 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 that would be sufficient for the complainant to succeed in bringing charge home to 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. Magistrate has to carefully scrutinise 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.”

Reliance in this regard can also be place upon the judgments rendered by the Hon’ble Supreme Court in ***Ramdev Foods Products Pvt. Ltd. Vs. State of Gujarat, (2015) 6 SCC 439.***

7. In view of the aforesaid discussion, the summoning order dated 25.09.2019 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Ludhiana is set aside and the matter is remanded back to learned trial Court to pass a fresh order satisfying the objective standards of reason and justice.

20.01.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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