



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

CRM-M No.29570 of 2025

Date of Decision: 27.05.2025

Subhash Chand @ Subhash Chander and others

..... Petitioners

Versus

Nisha Dhand

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Sharma, Advocate for the petitioners.

RAJESH BHARDWAJ, J.

1. Present petition has been filed praying seeking quashing of criminal Complaint bearing No.COMI-64770/2023 titled as '**Nisha Dhand Vs. Subash Chand and others**' under Sections 406, 380, 120-B of IPC, 1860 (Annexure P-1) as well as the summoning order dated 09.12.2024 (Annexure P-4) whereby the petitioners have been summoned for commission of offence under Section 380 and 120-B of IPC. Further prayer has been made for staying the further proceedings before the learned trial Court.

2. Succinctly, the facts of the present case are that the respondent had filed a complaint against the petitioners and the learned trial Court, on appreciating the preliminary evidence, had summoned the petitioners to face the trial for the offence punishable under Sections 380, 120-B IPC vide summoning order dated 09.12.2024. Aggrieved by the same, the petitioners have approached this Court for quashing of criminal complaint bearing no.COMI-64770/2023 and the summoning order dated 09.12.2024.



3. Learned counsel for the petitioner has contended that the complaint was filed by the respondent after an unexplained delay of one year and four months. He submits that the alleged incident of theft had taken place on 15.06.2022, whereas the complaint has been filed on 05.10.2023. He has submitted that there is no averment in the complaint to suggest that the respondent had entrusted her jewellery to petitioner no.2. Thus, the basic ingredient for the offence under Section 380 & 120-B IPC, are not made out. It is submitted that no document pertaining to the entrustment of the jewellery item had been placed on record and thus, the offence as alleged, is not made out. He has submitted that earlier, learned JMIC had dismissed the complaint vide order dated 02.03.2024, however, the same was assailed by the respondent by way of filing the revision petition before the Revisional Court. The learned Revisional Court had illegally set aside the order passed by the learned trial Court and, thus, remanded the case back to the learned JMIC for a decision afresh. However, on remand, the learned trial Court, without appreciating the evidence on record, has illegally summoned the petitioners. He has submitted that the present case is purely of civil nature, which has been deliberately given the colour of criminal nature. It is submitted that no *prima facie* case, as alleged, is made out against the petitioners and, thus, the impugned complaint and the summoning order deserve to be quashed.

4. I have heard learned counsel for the petitioners and perused the available record with his able assistance.



5. The respondent-complainant has filed the complaint dated 05.10.2023. Perusal of the complaint would show that marriage of son of the complainant took place with petitioner no.2 on 11.05.2022. It was specifically alleged that the marriage was without any dowry. However, after marriage, there arose some matrimonial discord and on 15.06.2022, petitioner nos.1 and 3 took away petitioner no.2 from the matrimonial home along with the alleged jewellery items. The details of the jewellery was mentioned as one diamond ring, one gold chain with pendant, 2 gold ear rings weighing 45 grams, one gold ring weighing 6 grams and one ghari churri 25 grams. It was alleged that no dowry was taken but despite that the petitioners had taken away the jewellery items from the matrimonial home, which belong to the respondent-complainant. The learned trial Court had examined the witnesses in the preliminary evidence and found that a *prima facie* case is made out against the petitioners. As per the law settled, at the stage of summoning, the trial Court is not to shift the evidence but to opine whether any *prima facie* case is made out for summoning the accused.

6. Hon'ble Supreme Court in case of 'M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate, 1997(4) RCR (Criminal) 761', laid down the golden standard for summoning of a person as an accused in a Court case. Paragraph 28 therein is noteworthy and it reads thus:

“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 would that 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 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.”

7. Hon’ble Supreme Court in Aniruddha Khanwalkar vs. Sharmila Das, 2024 AIR Supreme Court 2802, has held that for summoning of an accused at preliminary stage, a prima facie case is to be made out on the basis of the allegations in the complaint and the pre-summoning evidence led by the complainant.

8. Hon'ble Supreme Court in State of Haryana vs Bhajan Lal's case (supra) has held that the High Court has inherent power under Section 482 Cr.P.C. for quashing the FIR, however, the same should not be exercised for the offence falling under the heinous categories. It has been further observed in Bhajan Lal's (supra) as under:-

“102. 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 channelized 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 FIR 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 FIR 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 FIR 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.”

9. Keeping in view the above, this Court does not find any ground for quashing of the criminal complaint and summoning order dated 09.12.2024. Thus, weighing the facts and circumstances of the case on the anvil of law settled, this Court finds that case in hand fails to qualify for invoking the inherent jurisdiction by this Court. Resultantly, the present petition being devoid of any merit is hereby dismissed.

10. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

27.05.2025

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