2025:PHHC 023214

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52699-2024 (O&M)
Reserved on : 15.02.2025
Pronounced on : 19.02.2025

Gagandeep Kaur **...Petitioner**

Versus

State of Punjab and another **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gurinder Singh Brar, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

Mr. Dalbag Singh Rai, Advocate and
Mr. Amit Chopra, Advocate
for respondent No. 2/complainant.

MANISHA BATRA, J.

1. This petition has been filed by the petitioners under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 *(for short 'BNSS')* for quashing of complaint bearing number COMI/82/2022 (Annexure P-1), titled as ***Lovepreet Singh vs. Gagandeep Kaur and others***, filed under Sections 406, 420, 120-B and 34 of IPC and Section 24 of the Immigration Act, 1983, as well as for quashing of summoning order dated 04.11.2023 (Annexure P-2), passed by the Court of learned Judicial Magistrate First Class, Jagraon, whereby the petitioner had been summoned to face trial in the aforesaid complaint for commission of offence punishable under Section 420 read with Section 34 of IPC.

2. For the sake of coherence and continuity, the parties will be referred to as per their original nomenclature given in the impugned complaint.

3. Brief facts of the case relevant for the purpose of disposal of this petition are that the complainant/respondent No. 2 was a graduate in IT from Punjab Technical University and was desirous of settling in Canada. His close relatives and friends were aware of his desire. Accused No. 7-Ajmer Singh and accused Nos. 1 to 4, namely Gagandeep Kaur (petitioner herein), Jagtar Singh, Parminder Kaur and Sukhdeep Singh, respectively, were aware that the complainant wanted to settle abroad. They approached the complainant and his mother Binder Kaur through Gurmail Singh and represented that the petitioner is a well educated girl and had also cleared IELTS examination and was eligible to migrate to Canada. It was also represented that the accused persons could not bear the expenses of migration of the petitioner to Canada. The accused persons also represented that if the complainant got married with the petitioner and bore the expenses of her migration to Canada, he could immediately join her during her course in Canada and they could easily settle in Canada.

4. As per the further allegations, it was on the above representation that the mother of the complainant, who was working as teacher, parted away with her life time savings as well as retiral benefits to facilitate the migration of the petitioner with an understanding that the complainant would join her subsequently in Canada as her spouse. The marriage of the parties was solemnized on 17.07.2017 and all the expenses were borne by the complainant's family. Immediately after the marriage, the parents of the

petitioner and petitioner herself held out that for tuition fees and visa, an amount of Rs. 10 Lakhs was required. On being induced by them, an amount of Rs. 10 Lakhs was transferred from the account of the complainant's mother to the account of accused No. 2, who is father of accused No. 1. The complainant and his mother were also made to purchase the air tickets for a sum of Rs. 85,000/-. Ultimately, the petitioner reached Canada and she continued to represent that she would be soon applying for the migration of the complainant to Canada as her spouse. The complainant remained under the *bonafide* impression that the petitioner had applied for his migration to Canada.

5. The complainant further alleged that after reaching Canada, the petitioner raised demand of a sum of Rs. 4 Lakhs as fee to be paid for the course and then increased the said demand to Rs. 7 Lakhs by saying that the amount of fee had increased. Getting suspicious, the complainant made inquiries and came to know that the actual fee outstanding was Rs.3,75,148/- and on the asking of the petitioner, the said amount was deposited in the account of accused No. 3-Parminder Kaur, who is mother of the petitioner. When the petitioner came to know that the entire demanded amount was not so deposited, she started abusing the complainant and proclaimed that she would not call him to Canada and even stopped taking his calls. On complaining, her parents also supported their daughter.

6. The complainant further alleged that feeling disturbed, he filed a criminal complaint on 01.05.2018 for initiating legal action against the accused but the matter was compromised between the parties on 16.06.2018 and it was decided that accused No. 1 would facilitate the migration of the

complainant to Canada. However, instead of that, she sponsored the migration of her parents and they left for Canada on the same day i.e. 16.06.2018. Accused No. 7-Ajmer Singh, who is maternal grandfather of the petitioner, had been extending threats to complainant. The complainant alleged that in aforesaid manner, the accused persons had cheated him and they had been threatening to implicate him in a false dowry case. The complainant had made several representations to the police authorities but no action had been taken thereon. The complainant had then filed a petition before this Court bearing number ***CRM-M-20674-2019*** seeking registration of FIR against the accused person, which was disposed of on 07.05.2019 relegating the complainant to approach the Judicial Magistrate concerned. Therefore, the complainant had filed aforesaid complaint against the accused persons, wherein, the petitioner and her parents have been summoned to face trial, vide impugned order dated 04.11.2023.

7. Learned counsel for the petitioner has argued that she and her other accused have falsely been implicated in this case. The summoning order passed by the learned trial Magistrate is not sustainable in the eyes of law as while passing the same, the learned Magistrate ignored the fact that there was nothing on record to make out the ingredients for commission of offence under Section 420 of IPC. A non-speaking and cryptic order had been passed, thereby summoning the petitioner and her parents to face trial. The expenses of getting visa and study fees etc. for the petitioner had been incurred by her parents much before her marriage with the complainant. The mother of the complainant had transferred an amount of Rs. 10 Lakhs to the account of petitioner No. 2 for the arrangement of the marriage with their own free will

and without any demand from the petitioner or her family members. The petitioner had stayed in her matrimonial house for a very brief period i.e. from 17.07.2017 to 29.08.2017 and had left for Canada on 29.08.2017. The family of the complainant had transferred an amount of Rs. 3,75,148/- to Gagandeep Kaur after her reaching Canada. It is further argued that the petitioner is the legally wedded wife of respondent No. 2 and she is ready to take respondent No. 2 to Canada. Therefore, it is argued that the present petition deserves to be allowed and the impugned complaint as well as the summoning order are liable to be set aside.

8. On the other hand, it has been argued by learned State counsel, assisted by learned counsel for respondent No. 2/complainant, that the trial Magistrate, on being *prima facie* satisfied that there was sufficient evidence on record to issue process as against petitioner Gagandeep Kaur and her parents , had passed the impugned summoning order. It is also argued that the petition filed by co-accused i.e. parents of the present petitioner seeking quashing of the complaint already stands dismissed. It is further argued that the proceedings for declaring the petitioner as a proclaimed person in the main complaint are going on. It is, therefore, submitted that there is no illegality or infirmity in the same impugned order and the petition is liable to be dismissed.

9. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

10. The petitioner along with her parents has been summoned by the Court of learned Magistrate to face trial for commission of offence punishable under Section 420 read with Section 34 of IPC. Undisputedly, a Magistrate has power to take cognizance of an offence under the provisions of Section

200 of Code of Criminal Procedure in a private complaint and to issue the process when the material produced on record, in his opinion, is sufficient to do so. The sustainability of exercise of such power, is to be considered in view of the legal and factual position. The Hon'ble Supreme Court laid down the golden standard for summoning an accused in its decision in ***M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others : (1998) SCC (Criminal) 1400,*** wherein it was observed that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of ordinary 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 the evidence that would also be sufficient for the complainant to succeed in bringing home the charge as against 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. The 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.

11. As per Section 204 of the Code, if in the opinion of the Magistrate taking cognizance of an offence, there are sufficient grounds for proceeding, he shall issue summons for procuring the attendance of the

accused in a summons case or in a warrant case. The sine qua non for exercising the power under Section 204 of the Code to issue process is the subjective satisfaction regarding the existence of sufficient ground for proceeding. In ***Mahmoodul Rehman and others Vs. Khazir Mohammad Tunda and others : (2015) 12 SCC 420***, the Hon'ble Supreme Court held thus:-

> *"22.....The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court..........In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction...........To be called to appear before criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."*

12. In ***Sunil Bharti Mittal vs. CBI : (2015) 4 SCC***, the Hon'ble Supreme Court interpreted the expression "sufficient ground for proceeding" and held that there should be sufficient incriminating material against the

accused concerned before proceeding under Section 204 of the Code. It was observed as follows:-

> *"the words '**sufficient ground for proceeding**' appearing in Section 204 are of immense importance. These words amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside, if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would not be bad in law, if the reason given turns out to be ex-facie incorrect."*

13. In view of the position as discussed above, it is to be considered as to whether sufficient evidence had been produced on record by the complainant against the petitioner to prove that process was liable to be issued against her or not? The complainant-Lovepreet Singh, besides himself stepping into witness box as CW-1, is shown to have produced Gurmail Singh as CW-2, Binder Kaur as CW-3, Pritam Singh as CW-4 and Daljit Singh as CW-5 and all of them are shown to have supported version in the complaint. Certain documents have also been filed. The petitioner has been summoned for commission of offence under Section 420 of IPC. So far as the offence of cheating is concerned, the same is defined under Section 415 of IPC. The ingredients essential to constitute the offence of 'cheating' under Section 415 are:

> *(i) There should be fraudulent or dishonest inducement of a person by deceiving him;*

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b)The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii)In cases covered by (ii) (b), the act or omission should be one which causes damage or harm to the person induced in body, mind, reputation or property."

14. The essential ingredients to attract **Section 420** of IPC are:-

(*i) cheating;*

(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into valuable security, and the (iii) mens rea of the accused at the time of making the inducement."

15. On a perusal of the statements of the witnesses examined by the complainant as well as the documents placed on record, it is revealed that their statements are *prima facie* sufficient to prove that the petitioner and her parents had induced the complainant and his family members to part with a huge amount of money and to perform marriage with her by alluring them that after the marriage, the petitioner would shift to Canada and would sponsor the visa for the complainant. The oral and documentary evidence produced on record by the complainant also *prima facie* appear to be sufficient to prove that the mother of the complainant had transferred an amount of Rs. 10 Lakhs in the bank account of his father, had incurred expenses for buying air tickets for the petitioner and all the expenses for her studies in Canada had also been taken care of by the family of the complainant. The co-accused have admitted that an amount of Rs. 10 Lakhs had been deposited in their bank account by

the mother of the complainant, though the plea which is taken by them was that the aforesaid amount of Rs. 10 Lakhs was deposited by the mother of the complainant on her own for the purpose of sharing the expenses of the marriage. Though the petitioner has now shown her willingness to take her husband to Canada but that alone cannot be a ground to quash the summoning order. On considering the act and conduct of the petitioner and her parents on the anvil of the allegations levelled in the complaint as per evidence produced on record by the complainant, I am of the considered opinion that a *prima face* case for issuance of process under Section 420 of IPC had certainly been made out against the petitioner and her parents as the ingredients to constitute this offence are *prima facie* established. More so, the petition filed by her parents seeking quashing of the complaint on similar grounds already stands dismissed by this Court.

16. It is well settled proposition of law that at the stage of summoning, it is merely to be seen whether a *prima facie* case is made out or not. The submissions which have been raised by learned counsel for the petitioner call for determination on questions of fact which may be adequately adjudicated upon only by the learned trial Court and even the submissions made on the point of law also can be more appropriately gone into only by the learned trial Court. It is also settled principle of law that while dealing with the question as to quashing of a complaint and summoning order, the adjudication of questions of facts and appreciation of evidence or examining reliability and credibility of the version, does not fall within the arena of jurisdiction under Section 482 of the Code and jurisdiction to quash a complaint, FIR or a chargesheet should be exercised sparingly and only in

exceptional cases. However, where the allegations made in the FIR or the complaint or material on record even if 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, a chargesheet may be quashed in exercise of inherent powers under Section 482 of the Code.

17. On perusal of material placed on record, it cannot be held that the impugned criminal proceedings that have been initiated by the respondent No.2/complainant by filing complaint are manifestly attended with any *mala fide* and maliciously instituted with any ulterior motive for wreaking vengeance on the accused or with a view to spite them due to private or personal grudge. Rather, it appears that the impugned order has been passed by applying due procedure and no substantial illegality, perversity or any substantial error could be pointed out by learned counsel for the petitioners in the same. In my considered opinion, though this Court possesses inherent powers under Section 482 of the Code which are very wide but the very plenitude of the power requires great caution in its exercise and this inherent power cannot be exercised to stifle a legitimate prosecution. Such powers have to be exercised only to give effect to any order under the Code to prevent abuse of process of the Court and to secure the ends of justice. In the instant case, no such eventuality could be drawn.

18. After considering the contentions raised by learned counsel for the petitioner and perusing the contents of the impugned complaint and the material in support of same, this Court does not find it to be a case which could be determined or gone into a petition under Section 482 of the Code and to hold a parallel trial.

19. Accordingly, it is held that the order passed by the trial Magistrate of issuing process against the petitioner does not suffer from any manifest infirmity much less illegality warranting any interference by this Court. Therefore, no ground has been made out to interfere with the same. Resultantly, the petitioner is not entitled to be granted the relief of setting aside the summoning order.

20. So far as the prayer made by the petitioner for quashing the complaint is concerned, no doubt a complaint can be quashed by invoking power under Section 482 of the Code. However, for that purpose, certain conditions are to be satisfied. These conditions were discussed in detail by Hon'ble Supreme Court in ***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.*

21. On going through the material placed on record, it is apparent that the allegations as levelled in the complaint filed by respondent No. 2 have been supported by the evidence produced by him on record and it is not that they do not disclose the essential ingredients for commission of offence punishable under Section 420 of IPC, which is alleged against the petitioner. The allegations are specific and neither can be stated to be patently absurd or inherently improbable nor the discretion exercised by the Magistrate for issuing process can be stated to be capricious or arbitrary, not based on any evidence or based on inadmissible evidence. Therefore, I am of the considered opinion that no reasonable grounds for quashing the complaint have been made out as well.

22. It has also been brought to the notice of this Court that the proceedings for declaring the petitioner as a proclaimed offender/person have been initiated by the learned trial Court and the said proceedings are now pending for 01.03.2025. The petitioner, against whom proceedings for declaring her as a proclaimed offender/person have been initiated and she is at the verge of being declared so, is seeking quashing of the complaint as well as the summoning order while absconding from the process of Court. She has never joined the process of law either by appearing before the Investigating Officer or before the Court concerned. Hon'ble Supreme Court has unambiguously enunciated that an accused who is absconding or has been declared a proclaimed offender cannot invoke the inherent jurisdiction of the High Court under Section 482 of the Code to obliterate criminal proceedings. In ***State of Madhya Pradesh vs. Laxmi Narayan & Others, (2019) 5 SCC 688***, the Court accentuated that the antecedents and demeanor of the accused,

particularly their fugitive status, are pivotal considerations in adjudicating the quashing of proceedings. It was unequivocally held that extending such relief to an absconder would eviscerate the sanctity of the judicial process. It is well settled principle of law that an absconding accused is undeserving of judicial clemency under the extraordinary prerogative of Section 482 of the Code, as it would engender a travesty of justice and subvert the very tenets of legal probity. These pronouncements reaffirm the doctrinal imperative that an individual who deliberately eludes the legal machinery cannot beseech judicial intervention to nullify proceedings, as such an allowance would vitiate the rule of law and erode the edifice of equitable adjudication.

23. Accordingly, in view of the discussion as made above, the present petition is dismissed, being devoid of any merit.

19.02.2025 **(MANISHA BATRA)**

Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*