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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2002/2023**

AMIT VOHRA

.....Petitioner

Through: **Mr. Bhavook Chauhan, Adv.**

versus

JAGDISH

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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17.02.2025

1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Cr.P.C. read with Article 227 of the Constitution of India seeks the following prayers: -

“a) Set aside the Summoning order dated 28.06.2022 passed by Sh. Anshul Mehta, Ld. Metropolitan Magistrate, Tis Hazari Court, Delhi, thereby summoning the Petitioner for the offences under Section 323/341/506/509/34 of the Indian Penal Code”; and
b) Quash the Complaint and the proceedings emanating therefrom, in the Complaint case titled “Jagdish V/s. Amit Bohra & Ors.” bearing Complaint Case No. 2000 of 2020.”; and/or
c) Pass any other order as it may deem appropriate in the facts and circumstances of the case and in the interest of justice.”

3. Brief facts of the present case are that on 15.07.2019, respondent made a complaint to the SHO, Punjabi Bagh, against the present petitioner and other co-accused persons, pertaining to the allegations of threats being extended on their behalf to him. Thereafter, again on 04.03.2020, another complaint was made to SHO, Punjabi Bagh by the respondent, wherein, it was stated that no



action was taken on the earlier complaint filed by him on 15.07.2019. It was further alleged in the complaint dated 04.03.2020 by the respondent/complainant that in the last week of February 2020, he had taken his wife to hospital, where the present petitioners stopped them and slapped him two-three times and accused, Bablu, extended threat to him to do away with his life if he ever see the respondent in Punjabi Bagh. It was further alleged that earlier as well, they had implicated the respondent/complainant in a false murder case. Thereafter, a complaint case being CC No. 2000/2020 under Section 200 of the CrPC along with an application under Section 156(3) of the CrPC was filed on 16.03.2020 seeking registration of FIR for the offences punishable under Sections 323/341/506/509/34 of the IPC against the present petitioners.

4. Subsequently, cognizance was taken by the learned Metropolitan Magistrate in the aforesaid complaint *vide* order dated 15.09.2021 and the matter was put for pre-summoning evidence. Thereafter, learned Metropolitan Magistrate after considering the documents on record, examination of CW-1/respondent and arguments advanced on latter's behalf, issued summons against the present petitioner including Vijay Kumar Vohra and Balu, who were also named as accused persons in the aforesaid complaint.

5. Learned counsel for the petitioner has submitted that the impugned summoning order in the present case has been passed by the learned Metropolitan Magistrate without recording any reasons for the same. It is further submitted that initially the respondent had filed the aforesaid compliant case citing 5 witnesses which were sought to be examined, however, during the course of the pre-summoning evidence only the complainant/respondent was examined. It is pointed out that the wife of the



complainant, who was also allegedly present along with him in the hospital has not been examined prior to the summoning of the present petitioner. It is further the case of the petitioner that the allegations made in the complaint dated 04.03.2020 are improvements and after thought as no such allegations were made by the respondent in the initial complaint dated 15.07.2019 and ATR filed in the aforesaid complaint case before the learned Metropolitan Magistrate shows that there was a dispute between the parties pertaining to a financial transaction.

6. Notice was issued to the respondent/complainant *vide* order dated 22.03.2023, however, none appeared on his behalf despite service of the same. It has further been recorded in the order dated 21.02.2024 that learned counsel for the petitioner had filed affidavit of service stating that respondent has been duly served by speed post as well as courier. Thereafter, Court notice was issued to the respondent *vide* order dated 27.11.2024 and a report with regard to the same shows that the respondent has been served. Today, none appears on behalf of the respondent despite pass over. Hence, this Court has proceeded to hear the matter *ex-parte*.

7. Heard learned counsel for the petitioner and perused the record.

8. The present petitioner has been summoned by the impugned order dated 28.06.2022 which is reproduced as under: -

“Considering the documents on record, examination CW1 and arguments of the Ld. Counsel, the court is of the opinion that there is sufficient material on record to proceed further. Let summons be issued to the accused returnable on 02.09.2022.”

9. A perusal of the aforesaid order clearly reflects that no reasons has been assigned by the learned Metropolitan Magistrate while issuing summons to the present petitioner in the aforesaid compliant case. It is well settled law



that summoning of a person in a criminal prosecution is a serious matter and there should be proper application of mind by the learned Metropolitan Magistrate while passing a summoning order. The Hon'ble Supreme Court in **Deepak Gaba v. State of Uttar Pradesh, (2023) 3 SCC 423**, has observed and held as under: -

“12. In case of a private complaint, the Magistrate can issue summons when the evidence produced at the pre-summoning stage shows that there is sufficient ground for proceeding against the accused. **The material on record should indicate that the ingredients for taking cognizance of an offence and issuing summons to the accused is made out.** [*Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547 : (2020) 2 SCC (Cri) 361; *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687; and *Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400. The proviso to Section 200 of the Code is not applicable in the present case.]

28. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by Respondent 2 complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420 and 471IPC, as the allegations pertain to alleged breach of contractual obligations. **Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not to be entertained and should be dismissed at the threshold.** To avoid prolixity, we would only like to refer to the judgment of this Court in *Thermax Ltd. v. K.M. Johnny* [*Thermax Ltd. v. K.M. Johnny*, (2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650], as it refers to earlier case laws in copious detail.

29. In *Thermax* [*Thermax Ltd. v. K.M. Johnny*, (2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650], it was pointed out that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients



of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion.

30. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinise the evidence brought on record. He/She may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Cri) 828 : (2020) 2 SCC (Civ) 713; Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400]; and Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124.]

31. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

32. While summoning an accused who resides outside the jurisdiction of court, in terms of the insertion made to Section 202 of the Code by Act 25 of 2005, it is obligatory upon the Magistrate to inquire into the case himself or direct investigation be made by a police officer or such other officer for finding out whether or not there is sufficient ground for proceeding against the accused. [Vijay Dhanuka v. Najima Mamta, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479; Abhijit Pawar



v. *Hemant Madhukar Nimbalkar*, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192; and *Birla Corpn. Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.]*, (2019) 16 SCC 610 : (2020) 2 SCC (Cri) 828 : (2020) 2 SCC (Civ) 713.] In the present case, the said exercise has not been undertaken.

34. We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. [*Birla Corpn. Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.]*, (2019) 16 SCC 610 : (2020) 2 SCC (Cri) 828 : (2020) 2 SCC (Civ) 713]; *Mehmood Ul Rehman [Mehmood Ul Rehman v. Khazir Mohammad Tunda]*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124; *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866; and *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426.] **Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances.** When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued.”

(emphasis supplied)

10. The present petition should be allowed on the aforesaid ground itself. However, this Court has gone through the records of the case.

11. It is pertinent to note that along with the complaint under Section 200 of the CrPC, the respondent has also filed an application seeking registration of FIR under Section 156(3) of the Cr.P.C. In respect of the same, Action Taken Report (ATR) was called, which was filed by the concerned police personnel from P.S. Punjabi Bagh on 09.02.2021 wherein, it has been recorded as under:-

“It is most respectfully submitted that complainant has lodged a



complaint in this police station vide GO No. 42 A Dtd 15.07.2019, in which he has alleged that Amit Bohra S/o Mansraj Bohra, Hansraj Bohra S/o Chodhary Ram Bohra R/o 10/65 Punjabi Bagh and Vijay Kumar Bohra S/o Chodhary Ram Bohra R/o 10/65 Punjabi Bagh all the alleged persons are threatening him and if anything happens to him, they all will be responsible.

The above complaint was marked to ASI Naresh who conducted the enquiry and during enquiry it is revealed that the issue is related to nonpayment of money to the complainant by the above alleged persons as he has done some work in the Sonapat area on the behest of Vijay Bohra.

The complainant was advised to approach the Labour Court and as the matter was civil the complaint was filed. The complainant has again filed the complaint in this police station dtd. "04.03.2020 alleging the same allegations and that he was slapped by Amit Schra. The allegations are found. to be baseless and extravigated and the issue is only related to non-payment of dues by the alleged persons in the complaint. Hence the same was also filed.

However, the undersigned is ready to abide the directions of this Hon'ble Court."

12. Even in the pre-summoning evidence of the respondent/complainant, who was examined as CW-1 had made the following allegations: -

"Accused persons are having inimical terms with the complainant and accused persons managed to falsely implicate the complainant in a murder case in 1992 in Panipat Haryana in which complainant was convicted for life imprisonment. Despite that, accused persons are regularly threatening the complainant to implicate in other false case and to kill complainant. The last week of February 2020, the complainant alongwith his wife went to hospital but all the accused persons met with complainant and his wife and they stopped them after that accused No.1 & 2 slapped on the face of complainant and his wife afterthat complainant visited PS Punjabi Bagh and filed a complaint. Thereafter the accused persons threatened complainant and his wife to kill and used filthy language with his wife.

On 04.03.2020, the complainant again made another complaint against the accused persons. On 26.06.2022, two other persons met the complainant and threatened complainant to take back his complaint otherwise they will kill him."



13. The original complaint filed by the respondent on 15.07.2019 is reproduced as under: -

“I humbly request you that I, Jagdish S/o Sh. Surat Singh, am a permanent resident of Village Bakner, H.No. 861, P.S. Narela. To Me Amit Bohra S/o Hansraj Bohra House No. 10/65 Foota Road Punjabi Bagh Delhi, Hansraj Bohra S/o Chowdhary Ram Bohra, Vijay Kumar Bohra S/o Chowdhary Ram Bohra, Bablu S/o Chowdhary Ram Bohra all of them have given threats many times before. Behind all these killings are being done at the behest of Hansraj and at the behest of his younger son.

The permanent address of Hansraj is S/S 2nd floor in the apartment in front of Hansraj School is permanent addresses of Amit Bohra S/o Hansraj, so respected sir I humbly request that if any incident happens with me, then these four will be responsible. Please try to take legal action against them.”

14. The second complaint filed by the respondent before the SHO, P.S. Punjabi Bagh on 04.03.2020 reads as under: -

“I humbly request you that I, Jagdish s/o Shri Surat Singh, am a permanent resident of village Bakaner House No. 861, P.S. Narela. I had given a written complaint against Amit Bohra S/o Hansraj Bohra Kothi No. 10/6 Punjabi Bagh, Hansraj Bohra S/o Chowdhary Ram Bohra, Vijay Kumar Bohra S/o Chowdhary Ram Vohra, Bablu S/o Chowdhary Ram Bohra in P.S. Punjabi Bagh on 15/7/19, but no action was taken on that. In the last week of February-2020, I had gone to the hospital with my wife, all three of them had stopped us and Amit Vohra and Vijay Kumar slapped me twice or thrice and Bablu threatened to kill me if he ever sees me again, anywhere in Punjabi Bagh. Earlier also they had falsely implicated me in a murder case, so respected sir with folded hands I humbly request you to take legal action against all of them, and help me get rid of all of them. It will be very kind of you.”

15. A perusal of the aforesaid averments made in the complaints filed by the respondent/complainant as well as pre-summoning evidence, this Court is of the considered opinion that no offence has been made out. The incident



which has been referred to by the respondent/complainant is also completely vague. The complainant has not given any time or date of the said incident. As rightly pointed out by learned counsel for the petitioner, the wife of the present respondent has not been examined during pre-summoning evidence although she was cited as witness by him in his list of witnesses filed along with the complaint in the present case. Nothing has been brought on record to show that such an incident took place. There is no complaint of the concerned date on which the alleged incident is stated to have taken place. The action taken report (ATR), as pointed out hereinbefore, shows that there was some dispute regarding financial transaction between the respondent/complainant and the present petitioner. It is pointed out that the said allegations were already being inquired into by the concerned IO and were found to be baseless. The learned Trial Court while issuing summons also did not specify as to what offences had been committed by the present petitioner. The impugned order, as noted hereinabove, is completely vague and has been passed without due application of mind.

16. In these circumstances, this Court of the considered opinion that the continuation of the proceedings in the aforesaid complaint case is abuse of process of law, and in the interest of justice, the impugned order dated 28.06.2022 along with the aforesaid complaint case being CC No. 2000/20 titled as “Jagdish v. Amit Bohra” including all the proceedings emanating therefrom are set aside.

17. The present petition is allowed and disposed of accordingly.

18. Pending applications, if any, also stand disposed of accordingly.



19. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

FEBRUARY 17, 2025/nk

Click here to check corrigendum, if any