Ghanshyam and Others Vs Balwant Singh and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 17, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 155(2), 156(1), 200, 202, 202(2)
Penal Code, 1860 (IPC) â€" Section 323, 325, 34, 452, 506

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: N.S. Shekhawat, for the Appellant; Gaurav Jain, Advocate for Mr. A.K. Jain, Advocate for respondent No. 1, Mr. Kartar Singh, DAG Haryana, for the Respondent

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.
What cannot possibly be disputed here is that the Hon''ble Apex Court has authoritatively held, in a celebrated

judgment in case State of Haryana and others Vs. Ch. Bhajan Lal and others, , which was again reiterated in case Som Mittal v. Government of

Karnataka 2008 (2) R.C.R. (Cri.) 92, that the criminal prosecution can only be quashed in rarest of rare case at the initial stage as per the

following conditions:-

(i) 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.

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

the Code.

(iii) 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.

(iv) 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 S. 155(2) of the Code.

(v) 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.

(vi) 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.

(vii) Where a criminal proceeding is manifestly attended with malafide 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 person a grudge.

Not only that, again the Hon''ble Supreme Court in case Jeffery J. Diermeier & Anr. v. State of West Bengal & Anr. 2010 (3) R.C.R. (Cri.) 183,

having interpreted the scope of section 482 Cr.PC, has ruled (para 16) as under:-

16. Before addressing the contentions advanced on behalf of the parties, it will be useful to notice the scope and ambit of inherent powers of the

High Court u/s 482 of the Code. The Section it self envisages three circumstances under which the inherent jurisdiction may be exercised, namely,

(i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice.

Nevertheless, it is neither possible nor desirable to lay down any in flexible rule which would govern the exercise of inherent jurisdiction of the

Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised

sparingly, carefully and cautiously, exdebito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that

the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent

abuse of authority and not to produce in justice.

2. Above being the legal position, now the short and significant question, though important that, arises for determination in the instant petition is, as

to whether the impugned complaint (Annexure P1) filed by complainant respondent No. 1 Balwant Singh son of Ishwar Singh (for brevity ""the

complainant"") and the summoning order dated 3.1.2007 (Annexure P2), by means of which, the petitioners-accused were ordered to be

summoned as accused to face the trial under Sections 323, 325, 452 and 506 read with Section 34 IPC by the JMIC, deserve to be quashed at

this preliminary stage or not?

3. Having regard to the legal position, material on record and rival contentions of learned counsel for the parties, to my mind, the answer must

obviously be in the negative in this context.

4. As is evident from the record, that Rameshwari, wife of the complainant was residing in her parental house in village Ram Nagar, District

Bhiwani. According to the complainant that petitioners-accused tried to illegally occupy the property, were nursing a grudge and used to harass &

humiliate them, so that, his wife may sell the property of her father to them on account of harassment. The complainant has specifically claimed that

on 4.2.2006 at about 9 a.m., all the petitioners-accused entered her residential house, started beatings, gave slaps, fist blows and caused several

injuries to him. As soon as, his wife Rameshwari tried to save him, in the meantime, all the accused gave slaps & fist blows and caused injuries to

her as well. They raised the noise, which attracted PW Mohar Singh son of Tota Ram at the spot. Thereafter, they decamped from the place of

occurrence after threatening with dire consequences to eliminate them. The complainant went to the police station to report the matter and police of

Police Station Charkhi Dadri assured that action would be taken against the accused.

5. The case of the complainant further proceeds that at about 10.30 A.M., when he reached the house, his wife Rameshwari and PW Mohar

Singh narrated the tale of their woe that all the accused again entered the house and started digging to disconnect the water connection. When she

asked them not to enter her house, then, all of a sudden, they gave injuries to her as well. Thereafter, on reaching the spot, when PW Mohar Singh

tried to save Rameshwari, then, all the accused also caused injuries to him, gave slaps & fist blows to him and also broken his tooth. The

occurrence was stated to have also been witnessed by PWs Charan Singh son of Parbhati and Mohar Singh, who saved them from the clutches of

the accused. While leaving, all the accused again threatened to kill them.

6. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the complainant claimed that all the petitioners-accused

twice entered his house and caused injuries to him, his wife and PW Mohar Singh in the manner indicated here-in-before. Since the police did not

take any action, so, the complainant filed the private complaint (Annexure P1) against all the accused.

7. Taking cognizance of the complaint and considering the preliminary evidence, the Magistrate summoned the petitioners-accused to face the trial

for the indicated offences, vide impugned summoning order (Annexure P2).

8. Instead of submitting to the jurisdiction of the trial Magistrate, the petitioners-accused straightway jumped to file the present petition for quashing

the impugned complaint and summoning order, invoking the provisions of Section 482 Cr.PC.

9. Ex facie, the arguments of learned counsel that Satpal was elected as Sarpanch of village Ram Nagar and his work was appreciated by the

District Administration, vide certificates (Annexures P3 & P4) and as he issued a notice (Annexure P6) three months prior, therefore, the

complainant has filed the criminal complaint (Annexure P1) against the petitioners-accused, are not only devoid of merit but misplaced as well.

10. It is not a matter of dispute that Rameshwari, wife of the complainant was residing in her parental house and petitioners-accused were stated to

have an evil eye and have a clear motive to illegally occupy her property. There are direct allegations against them that they twice entered the house

of complainant and caused injuries to him, his wife and PW Mohar Singh. The mere fact that appreciation letters (Annexures P3 & P4) were given

to Satpal accused or he issued notice (Annexure P6) to the complainant, ipso facto, is no ground to quash the complaint at this initial stage, as

(contrary) urged on behalf of the accused.

11. The next celebrated contention of learned counsel that sufficient evidence was not available on record to summon the petitioners-accused by

the Magistrate, again lacks merit. The version contained in the complaint (Annexure P1), reiterated by the complainant Balwant Singh (CW3) finds

further corroboration by the testimony of his wife Rameshwari (CW1) and Mohar Singh (CW2) an independent witness. Again, it is not a matter

of dispute that injured PWs Rameshwari and Mohar Singh were medico legally examined, vide MLRs bearing Nos. AG/28/06 & AG/27/06 dated

4.2.06 respectively (attached with the complaint).

12. Meaning thereby, there was sufficient oral, documentary and medical evidence on record, which was relied upon in right perspective by the

Magistrate. It is now well settled proposition of law that at this stage, the Magistrate has only to see whether on a cursory perusal of the complaint

and the evidence recorded during the preliminary inquiry under Sections 200 and 202 Cr.PC, there is prima facie evidence in support of the

allegations leveled against the accused. All that he has to see is whether or not there is ""sufficient ground for proceeding"" against the accused. At

the stage of summoning, the Magistrate is not to weigh the evidence so meticulously as he is required to do during the course of trial of main case.

The standard to be adopted by the Magistrate in scrutinizing the evidence is not the same as the one which is to be kept in view at the stage of

framing charges. This matter is no more res integra and is well settled.

13. An identical question came to be decided by the Hon''ble Apex Court in case Shivjee Singh Vs. Nagendra Tiwary and Others, , wherein the

view taken in case Mohinder Singh v. Gulwant Singh 1992 (2) RCR (Cri.) 134 was reiterated and observed (paras 11 & 12) as under:-

11. The scope of enquiry u/s 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order

to determine whether process should issue or not u/s 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of

the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if

any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued u/s 204 of the

Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused

person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage

of the enquiry contemplated u/s 202 of the Code. To say in other words, during the course of the enquiry u/s 202 of the Code, the enquiry officer

has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed

accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry.

(Emphasis supplied)

12. The use of the word `shall ''in proviso to Section 202(2) is prima facie indicative of mandatory character of the provision contained the rein,

but a close and critical analysis there of a long with other provisions contained in Chapter XV and Sections 226 and 227 and Section 465 would

clearly show that non examination on oath of any or some of the witnesses cited by the complainant is, by itself, not sufficient to denude the

concerned Magistrate of the jurisdiction to pass an order for taking cognizance and issue of process provided he is satisfied that prima facie case is

made out for doing so. Here it is significant to note that the word `all'' appearing in proviso to Section 202 (2) is qualified by the word `his''. This

implies that the complainant is not bound to examine all the witnesses named in the complaint or whose names are disclosed in response to the

order passed by the Magistrate. In other words, only those witnesses are required to be examined whom the complainant considers material to

make out a prima facie case for issue of process. The choice being of the complainant, he may choose not to examine other witnesses.

Consequence of such non-examination is to be considered at the trial and not at the stage of issuing process when the Magistrate is not required to

enter in to detailed discussions on the merits or demerits of the case, that is to say whether or not the allegations contained in the complaint, if

proved, would ultimately end in conviction of the accused. He is only to see whether there exists sufficient ground for proceeding against the

accused.

14. The last submission of learned counsel that the petitioners-accused have been falsely implicated by the complainant due to enmity as the

complainant belongs to opposite group of the Sarpanch, is again not only devoid of merit but misconceived as well at this stage. As to whether the

accused have been falsely implicated, all other contentions relatable to alibi, motive and previous enmity, as now sought to be urged on their behalf

and letter (Annexure P5) issued by SDO (Civil) to XEN (Public Health), notice (Annexure P6), application (Annexure P7) and writing (Annexure

P8) are genuine or not and what would be their effects, would be the moot points to be decided during the course of trial by the trial Court. If all

such points, relatable to the defence of the accused, which require determination by the trial Court, are to be decided by this Court in the garb of

petition u/s 482 Cr.PC, then the sanctity of the trial would pale into insignificance and amount to nullify the statutory procedure of trial as

contemplated under the Code of Criminal Procedure, which is not legally permissible.

15. Therefore, to me, the indicated Bench mark and all essential ingredients for quashing the impugned complaint and summoning order contained

in Ch. Bhajan Lal, Som Mittal and Jeffery J. Diermeier"s cases (supra) are totally lacking and no ground, much less cogent, for quashing the

impugned complaint (Annexure P1) & summoning order (Annexure P2) is made out at this preliminary stage, in the obtaining circumstances of the

case.

16. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

17. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the

course of trial of the main complaint case, as there is no merit, therefore, the instant petition is hereby dismissed as such. Needless to mention that

nothing observed, here-in-above, would reflect, in any manner, on merits during the trial of the main complaint case, as the same has been so

recorded for a limited purpose of deciding the present petition in this relevant direction.