
(2008) 12 P&H CK 0175

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-9093 of 2008

Prem Kaur @ Premo

APPELLANT

Vs

Balwinder Kaur

RESPONDENT

Date of Decision: Dec. 11, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 342, 498A

Citation: (2008) 28 CriminalCC 490

Hon'ble Judges: S.D. Anand, J

Bench: Single Bench

Advocate: Satinder Khanna, for the Appellant; Jagjit Singh, for the Respondent

Final Decision: Dismissed

Judgement

S.D. Anand, J.

The respondent/complainant filed a (private) complaint against the petitioners (and two others non-petitioners, all of whom were ordered to be summoned by the learned Trial Magistrate (vide order dated 19.01.2008) for trial under Sections 342/406/498-A IPC.

2. The petitioners (Prem Kaur @ Premo and Mohinder Singh) are parents-in-law of the estranged daughter-in-law who is married to their son Mohinder Singh; while petitioner Inderjit Kaur is Delhi based married sister-in-law (husband's sister) of estranged lady.

3. The grievance of the learned counsel for the petitioner is that her summoning could not have been validly ordered by the learned Trial Magistrate without holding an enquiry u/s 202 Cr.P.C. That plea is raised in the light of the amended provisions of Section 202 Cr.P.C. Reliance, in support of that view, is also placed upon a ruling rendered by a Coordinate Bench of this Court in S.K. Bhowmik v. S.K. Arora & Anr. 2007 (4) CCC 839 (P&H) : 2007 (4) RCR 650. Before the impugned amendment in the year 2006, sub Section (1) of Section 202 Cr.P.C. read as under:-

202. Postponement of issue of process. - (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him u/s 192, may, if he thinks fit, postpone the issue of process against the accused, and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.

4. After 2006 amendment that Sub Section (1) of Section 202 Cr.P.C. Reads as under:
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202. Postponement of issue of process. - (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him u/s 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.

5. It would be apparent, from a conjunctive perusal of the above provisions of law, that the underlined expression has been brought on the statute book vide 2006 amendment.

6. In the face thereof, learned counsel for respondent/complainant argues that the amended provision quoted above would come into play if petitioner No. 3 was residing at Delhi at the time of commission of offence under reference.

7. The plea raised is totally denuded of merit. It would be apparent from a perusal of the quoted impugned provision of law that proper time in the context is when the matter comes up before the Court of law for consideration of preliminary evidence. It is then only that the Magistrate has to compulsively post-pone the issue of process in the indicated manner if it is found that "the accused is residing at a place beyond the area in which he exercises his jurisdiction".

8. The inescapable conclusion drawable from the above discussion is that the impugned order is not sustainable to the extent it relates to petitioner No. 3 in view of the fact that no enquiry u/s 202 Cr.P.C. concededly came to be held before the impugned order came to be granted qua that petitioner.

9. Insofar as the petitioner No. 1 and 2 are concerned, there are precise allegations in the complaint and the preliminary evidence against them. The present is, thus, not a case where any quashment could be ordered. If those petitioners have a grievance qua the validity of that order, they could have recourse to the remedy available to them before the Court of Sessions which they had not done in the present case.

10. The petition shall stand allowed accordingly qua petitioner No. 3 Inderjit Kaur only. Qua petitioners No. 1 and 2, the petition shall stand dismissed.

11. Learned counsel for the petitioners No. 1 and 2 argues that present is a fit case in which petitioners No. 1 and 2 may be ordered to be exempted from personal appearance as both were in their sixties in the year 2000 when the Ration card Annexure P/4/T came to be issued in their favour. By that calculation, petitioner Mohinder Singh is presently in seventies; while petitioner Prem Kaur @ Premo would be aged about sixty eight years at the moment. In that context, learned counsel invites attention of this Court to order dated 18.07.2008 vide which a Coordinate Bench of this Court had directed exemption of those petitioners from personal appearance. It is ordered, in the circumstances of the case, that on a plea in the relevant behalf being filed, learned Trial Court shall take the old age of petitioners No. 1 and 2 into consideration while disposing of that plea. It shall also take into consideration the fact that there can be no dispute about the identity of those petitioners as they are parents-in-law. of the estranged respondent/complainant.