

(2009) 07 P&amp;H CK 0252

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Miscellaneous No. 11145-M of 2008 (O/M)

Ram Dhan and others

APPELLANT

Vs

Wazir Chander

RESPONDENT

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**Date of Decision:** July 7, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 382, 392

**Citation:** (2009) 5 RCR(Criminal) 492**Hon'ble Judges:** Augustine George Masih, J**Bench:** Single Bench**Advocate:** K.D.S. Hooda, for the Appellant; Sandeep Sharma, for the Respondent**Final Decision:** Allowed

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**Judgement**

Augustine George Masih, J.

This petition u/s 482 Cr.P.C. has been filed by the petitioners, praying for quashing of complaint dated 02.09.2002 (Annexure-P-1) titled as Wazir Chand v. Ram Dhan and others, under Sections 382/392/341/506/34 I.P.C., order dated 06.12.2006 (Annexure-P-4), passed by Additional Sessions Judge, Rohtak, as well as order dated 20.09.2007 (Annexure-P-7), passed by Judicial Magistrate 1st Class, summoning the petitioners in complaint case and all subsequent proceedings arising there from.

2. Complaint dated 02.09.2002 (Annexure-P-1) was presented in the Court of Judicial Magistrate 1st Class, Rohtak, by Wazir Chand respondent against the petitioners for prosecuting them under Sections 382/392/341/506/34 I.P.C. The matter was referred to S.H.O. P.S. Sadar, Rohtak, u/s 156(3) Cr.P.C. for registration of a case and for investigation of the matter. F.I.R. No. 273 dated 16.09.2002 under Sections 382/392/341/506/34 I.P.C. P.S. Sadar, Rohtak, was registered. On completion of the investigation, a cancellation report in the F.I.R. was submitted. The complainant filed a protest petition on notice being issued to him. The Court treated this protest

petition filed by the complainant as a complaint and thereafter asked the complainant to lead preliminary evidence. The complainant appeared as P.W.1 and supported his allegations made in the complaint. Apart from his oral evidence, he proved copy of the F.I.R. as Ex. P.1, Jamabandi as Ex.P.2 and Khasra Girdwari as Ex. P.3. Order passed by the Additional Sessions Judge, Rohtak, dated 15.03.2002 was also produced before the Court. On consideration of the evidence led by the complainant, Judicial Magistrate 1st Class, Rohtak, vide his order dated 04.02.2005 (Annexure-P-3), dismissed the complaint. Thereafter, Wazir Chand- respondent preferred a revision petition, which was decided vide order dated 06.12.2006 (Annexure-P-4), by the Additional Sessions Judge, Rohtak, wherein the Revisional Court came to a conclusion that the criminal court during inquiry u/s 202 Cr.P.C. was only required to see as to whether whatever has been stated by the witness, if believed, would make out an offence or not and the Magistrate could not proceed and adjudicate the matter upon merit of the complaint at the preliminary stage. It further came to a conclusion that the allegations made by Wazir Chandcomplainant, prima-facie made out an offence u/s 392/447/34 I.P.C. against all the respondents/petitioners. Accordingly, order dated 04.02.2005 (Annexure-P-3), passed by the Magistrate was set aside and the Magistrate was directed to proceed further in accordance with law and the complainant was directed to appear before the Magistrate on 11.02.2006.

3. On 11.02.2006, the complainant failed to appear before the Magistrate and after calling the case several times, the Court dismissed the complaint for non-prosecution. Again a revision petition was preferred against the order dated 11.02.2006. This revision petition was decided vide order dated 22.02.2007 (Annexure-P-6) and this order was set aside and the complainant was directed to appear before the Magistrate on 16.03.2007. The complainant appeared before the Magistrate and thereafter vide order dated 20.09.2007 (Annexure-P-7), Judicial Magistrate 1st Class, relying upon earlier order dated 06.12.2006 (Annexure-P-4), passed by the Revisional Court, wherein it was held that the allegations made by the complainant, prima-facie, makes out an offence punishable u/s 392/447 read with Section 34 I.P.C., summoned the present petitioners to face trial.

4. Counsel for the petitioners submits that no prima-facie case was made out against the petitioners on the basis of allegations made in the complaint or on the basis of evidence, which has been led by the complainant before the Magistrate. He further submits that the Magistrate is required to apply his independent mind on the basis of evidence led by the complainant to come to a conclusion as to whether there is sufficient material on record to proceed against the petitioners. He submits that the evidence, which has been led by the complainant goes beyond doubt to show that the said complaint is false as the same is belied by documentary evidence produced by the complainant himself. He submits that the criminal proceeding, which have been initiated against the petitioners is an abuse of process of Court and has been initiated only to harass, humiliate and malign the petitioners. He,

therefore, prays that the Court in the interest of justice must exercise its powers u/s 482 Cr.P.C. to prevent abuse of process of the Court.

5. On the other hand, counsel for the respondent submits that the complaint clearly makes out an offence, which has been committed by the petitioners. He further submits that the statement given by the complainant before the Magistrate, supporting the allegations against the petitioners further fortifies the assertion made by the complainant in the complaint. He submits that the requirement of law is that the evidence, which has been produced on record during the examination of the complainant before the Magistrate has to only prima-facie establish the commission of an offence and has not to be tested on the anvil of proof to the extent of holding the accused guilty whether the accused were liable for the alleged offence, would not be relevant consideration for the Court at that stage. The Magistrate was not holding a regular trial on the question of adjudication of the guilt of the accused at that stage. He on this basis submits that neither the complaint nor the order summoning the petitioners call for any interference by this Court.

6. The complaint preferred by Wazir Chand-respondent contained the averments that on 07.04.2002 at night he was in his fields for keeping a watch on his mustard crop and he slept there at about 09:00 P.M. All the accused came there at about 01:00 A.M. They were all armed with deadly weapons. Surinder son of Ram Lubhaya-petitioner No. 6 put his barrel of gun on the temple of the complainant and threatened that if he raised any hue and cry, he would be done to death. Complainant due to fear acted accordingly. He heard the noise of some women reaping the mustard crop from his field. This process continued for three to four hours. The crop was thereafter loaded in a trolley and they left the spot. The allegation, therefore, of the complainant was that his mustard crop was harvested by the accused/petitioners alongwith several women forcibly by giving threat to kill him. The complainant reported the matter to the police on 08.04.2002, but no action was taken by the police against the accused persons.

7. Section 200 Cr.P.C. provides that a Magistrate, who is taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses present, if any. The substance of the said examination has to be reduced in writing and signed by the complainant and the witnesses and also by the Magistrate. Exceptions thereof have been carved out but that would not be applicable to the present case. u/s 203 Cr.P.C., Magistrate, if after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) u/s 202, is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and for doing so, he is required briefly to record his reasons for so doing. However, as per Section 204 Cr.P.C., if in the opinion of the Magistrate, taking cognizance of an offence, there is sufficient ground for proceeding, he can proceed as per procedure provided therein. What,

therefore, comes out of the above is that, it is the opinion of the Magistrate with regard to sufficiency of the grounds for proceeding in the matter, which would determine as to whether the complaint would be dismissed or proceeded with further. The power to dismiss the complaint in a case the Magistrate formulates an opinion that there is no sufficient ground for proceeding as provided u/s 203 Cr.P.C.

8. In the present case, therefore, for summoning the petitioners the statement, which has been made by the complainant alongwith documents produced in support thereof would be relevant. The facts mentioned above are not in dispute nor is it in dispute that the complainant, while making his statement before the Magistrate has placed on record during his preliminary evidence, F.I.R. No. 273 dated 16.09.2002 as Ex. P.1, copy of the jamabandi as Ex.P.2 and copy of the khasra girdwari as Ex. P.3 and also photocopy of order dated 15.03.2002, passed by the Additional Sessions Judge, Rohtak, in the attachment proceedings. It could not be disputed by counsel for the respondent- complainant that jamabandi Ex.P.2 showed the land as Shamlat Pana Dudiyan Hasab Rasad Araj, which was attached vide rapat No. 95 dated 01.12.2000, and the Tehsildar, Rohtak, was appointed as a Receiver and the said land was released from attachment, vide order dated 15.03.2002, passed by the Additional Sessions Judge, Rohtak, (photocopy of the order produced by the complainant before the Magistrate). He also could not dispute that there is no evidence, which could suggest that order dated 15.03.2002 was implemented or the possession of the land was delivered to the complainant or anybody else after passing of order dated 15.03.2002. In view of the above, the land cannot be said to be in possession of the complainant at the time of alleged occurrence, which is dated 07.04.2002. Even assuming that order dated 15.03.2002 was indeed implemented immediately and the possession of the land was delivered to the petitioners, the period between handing over of the possession, which would obviously be on or after 15.03.2002 and the date of occurrence i.e. 07.04.2002, is hardly 23 days and within this short span of time, cultivation, sowing, and removal of the mustard crop by the accused persons, cannot be believed. It is a common knowledge that the mustard crop cannot be sown and reaped within one month. The allegations, therefore, made against the petitioners cannot be said to be correct. It cannot, therefore, be said that there is sufficient ground for the Magistrate, taking cognizance of the offence to form an opinion for proceeding in the case against the accused. The Magistrate, while exercising powers is not merely required to tow the line of the complainant blindly, whatever he states in his preliminary evidence. The law enjoins the Magistrate to apply its mind and formulate an opinion, which should be based on preliminary evidence, which has been led by the complainant so as to say that there is sufficient ground for proceeding against the accused. If the Magistrate forms an opinion that there is no sufficient ground for proceeding, he has been empowered u/s 203 Cr.P.C. to dismiss the complaint and in doing so, he is required to briefly record his reasons.

9. In the present case, when the preliminary evidence led by the complainant itself on evaluation, leads only to a conclusion that the allegations made by the complainant are not true, the continuation of such proceedings before the Magistrate would be an abuse of process of Court. The Magistrate, therefore, is required to apply his independent mind to the preliminary evidence led by the complainant and then form an opinion as to whether there is sufficient ground for proceeding further in the matter or not.

10. Present is a case where the preliminary evidence led by the complainant and that too documentary, clearly leads to only one conclusion that the same is not true. The complaint and preliminary evidence led by the complainant, when considered show that the allegations are 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/petitioners. These proceedings are manifestly initiated with malafide and without any basis. It is a fit case where this Court should exercise its powers u/s 482 Cr.P.C. to prevent the abuse of process of Court. Allowing continuation of such proceedings in the Court, would be encouraging fictitious litigation, which would be against the basic canons of justice, which stand for truth and truth alone must prevail.

11. Thus, to secure the ends of justice and to prevent the abuse of process of Court, the present petition is allowed. Order dated 20.09.2007 (Annexure-P-7), passed by the Judicial Magistrate 1st Class, Rohtak, summoning the accused/petitioners to face trial u/s 392/447/34 I.P.C., is hereby quashed and the complaint dated 02.09.2002 (Annexure-P-1) is hereby dismissed.