

(2023-2)210 PLR 697

PUNJAB AND HARYANA HIGH COURT

Before: Justice Pankaj Jain.

GURBACHAN SINGH and Others – Petitioners

Versus

STATE OF PUNJAB and Another – Respondents

CRM-M-38264 of 2019 (O&M)

Criminal Procedure, 1973 (2 of 1974) Section 210 – FIR already registered – Private complaint – Magistrate issuing summoning order – It was incumbent upon the trial Court to stay the proceedings of the inquiry/trial and call for a report on the matter from the Police Officer conducting the investigation – Summoning order passed in derogation of the procedure as prescribed under Section 210 Cr.P.C. – Quashed.

Mr. K.S. Kahlon, for the petitioners. Mr. Tarun Aggarwal, Sr. DAG, Punjab. Mr. Sidharth Gupta, Legal Aid Counsel for respondent No.2.

Pankaj Jain, J. (ORAL) – (27.07.2023) – Prayer is for quashing of criminal complaint titled as Kuldeep Singh Vs. Gurbachan Singh and others bearing criminal case No.33 of 21.02.2015 under Sections 326, 324, 323, 148 and 149 of IPC, Police Station Fatehgarh Churian (Annexure P-1) stated to be pending before JMIC, Batala, and summoning order dated 13.05.2019 passed by the trial Court, summoning the petitioners to face trial under Sections 326, 324, 148 and 149 IPC (Annexure P-4) and quash the impugned order dated 30.09.2015 (Annexure P-7).

2. Counsel for the petitioner submits that qua the same, FIR No.58 dated 20.07.2014 was got registered at Police Station Fatehgarh Churian and while investigation was pending, present complaint bearing No.33 of 21.02.2015 (Annexure P-1) was filed by the complainant, wherein, the petitioners have been summoned vide impugned order dated 13.05.2019 (Annexure P-4). Counsel further submits that the same has been passed by the trial Court, oblivious of the provisions contained in Sections 201 IPC, despite there being a criminal case. He submits that the trial court ought to have called for the investigation report from the investigating agency more so when the factum of FIR having been registered was mentioned in the complaint itself.

3. Learned counsel for respondent No.2 does not dispute that on the day the summoning order was passed, FIR No.58 dated 20.07.2014 was pending. He, however, submits that the complainant later suffered a statement before the Investigating agency that he does not

want to pursue a private complaint, in view of the fact that the accused stood summoned in the complaint case.

4. I have heard learned Counsel for the parties and have carefully gone through the records of the case.

5. In order to appreciate the controversy involved, the complaint filed by the respondent before the trial Court needs to be perused, which reads as under:-

"1. That complainant is the resident of Village Teja Kalan, P.S. Fatehgarh Churian Tehsil Batala District Gurdaspur and is agriculturist by profession.

2. That, there is a complaint case which is pending between the complainant and accused Gurbachan Singh and others in the court of Shri Harpreet Singh J.M.I.C. Batala which was fixed for 19.07.2014 and in that case accused Gurbachan Singh and his son accused Davinder Pal Singh and his wife accused Sawinder Kaur appeared as a witnesses and some unidentified persons and relatives were with them and outside the court a quarrel was occurred between the complainant and accused persons and after that complainant and his mother Tarleep Kaur were coming towards village Teja Kalan via Aliwal on a motor cycle. When they reached to Lorry weighreigh (Dharamkanda) near Pannu Palace Kala Afgana at about 6.30 p.m. they stopped at their Lorry weighreigh (Dharamkanda) to look after the same. At that time two cars one Zen Car and other Indica car color white came there and accused Gurbachan Singh, accused Sawinder Kaur his wife and their son accused Davinderpal Singh were sitting in Indica Car and accused Sawinder Kaur raised Lalkara to catch him and in the meantime accused Davinder Pal Singh who was driving the car stopped the car and after taking the Kirpan from car hit a kirpan blow to the complainant which hit on the right side of his head, and unidentified persons started quarrel with the complainant, in the mean time accused Gurbachan Singh gave 2/3 kirtch blows to the complainant which hit on the back of his neck, on his back and back side of the upper part of his left arm, then accused Davinder Pal Singh hit his kirpan blow to the complainant on which complainant forward his right arm for his rescue which hit on the outside of his right arm, then accused Gurbachan Singh gave his kirtch blow to the complainant which hit on his right side of the stomach and complainant and his mother loudly alarm Raula Maar Ditta Maar Ditta and in the mean time accused Davinderpal Singh gave his kirpan blow to the complainant which hit on the ankle of his left arm and on hearing our raula people started gathered and saying that all the accused ran away from the spot with their respective weapons on their vehicles

3. That, Jatinder Singh son of Harsukhwinder Singh r/o Bholeke reached at the spot and saw whole the occurrence and Jatinder Singh and my mother admitted the complainant at Civil Hospital Fatehgarh Churian and on 20.07.2014 police came Hospital and recorded statement of the complainant and in this regard FIR No. 58 dated 20.07.2014 was registered against the culprits at P.S. Fatehgarh Churian, but due to political pressure the police has not arresting the accused persons. Hence this complaint.

It is therefore prayed that all the accused may kindly be summoned and dealt with

according to law in the interest of justice.

6. A bare perusal of the impugned order passed by the JMIC, Batala also shows that the Court was conscious of the fact that FIR No.58 dated 20.07.2014 was registered on account of the same incident.

7. The procedure to be followed by the Court in such situation stands codified in Section 210 of the Code of Criminal Procedure, 1973, which reads as under:-

"210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

1. When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

2. If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

3. If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

8. From the records of the case, it is evident that the impugned order summoning the petitioners have been passed in derogation of the procedure as prescribed under Section 210 Cr.P.C.

9. It was incumbent upon the trial Court to stay the proceedings of the inquiry/trial and call for a report on the matter from the Police Officer, who is conducting the investigation. The trial Court having failed to resort to the mandatory procedure, the impugned order dated 13.05.2019 (Annexure P-4) cannot be sustained and is hereby ordered to be set aside. Opportunity is granted to the complainant to pursue his complaint from the stage, prior to the order of summoning and trial Court shall proceed in accordance with law.

10. Disposed off.

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Order accordingly.