
(1995) 06 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Criminal M.P. (M) No. 488 of 1993

A.D. Singh

APPELLANT

Vs

Eider Electronics Industries Ltd. and Another

RESPONDENT

Date of Decision : 05-06-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203, 204, 482
Penal Code, 1860 (IPC) — Section 409

Citation : (1995) 2 ILR HP 1579

Hon'ble Judges : A.L. Vaidya, J

Bench : Single Bench

Advocate : A.S. Chandel and Yoginder Paul, for the Appellant; Sandeep Kaushik and Shyama Dogra, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.L. Vaidya, J.—The present Respondent No. 1 has preferred a criminal complaint u/s 409 of Indian Penal Code against the present Petitioner. The allegations made in the complaint are not required to be detailed out in the present proceedings which entirely depends upon the legal proposition. The complaint was filed before Chief Judicial Magistrate, Nahan, but later on the complaint was assigned to Additional Chief Judicial Magistrate, Nahan. The trial magistrate on 5.6.1993 after going through the orders passed in the complaint came to the conclusion that no formal order after appreciating the preliminary evidence for summoning the accused was passed. Therefore, the learned magistrate directed to re-hear the complainant and thereafter to pass appropriate order, he adjourned the case for 10.6.1993 for consideration.

2. In the meantime, the accused-Petitioner preferred the present petition u/s 482 of the Code of Criminal Procedure with a prayer that complaint case No. 63/2 u/s 409 IPC, titled Eider Electronics Industries Ltd. v. A.D. Singh pending in the court of Additional Chief Judicial Magistrate, Nahan be quashed. The relief has been prayed on various grounds which included even the ground on merit and other

legal aspects also.

3. I have heard the learned Counsel for the parties and have scrutinised the entire record minutely.

4. At the first instance, the learned Counsel for the Petitioner has tried to assail the complainant and the preliminary evidence examined by the complaint on the ground that no offence u/s 409 IPC is made out, but later on did not stress this aspect of his argument, but confined his submissions in support of the relief asked for on legal ground alone.

5. It has contended on behalf of the Petitioner that after recording the preliminary evidence which included the statement of the complainant, the trial magistrate without applying his mind and without passing any legal order on the basis of the preliminary evidence ordered the summoning of the accused which order was prima-facie illegal and liable to be set aside in the present proceedings. It has further been contended that the trial magistrate vide order 5.6.1993 came to the conclusion that no formal order for summoning of the accused had been passed, therefore, he was left with no option but to re-hear the complainant and thereafter passed appropriate order in respect of the summoning of the proposed accused. According to the learned Counsel, this order dated 5.6.1993 amounted to review the earlier order of summoning the accused which under the law could not be so done by the trial magistrate and in that view of the matter also, this order dated 5.6.1993 is liable to be quashed and the net result, according to the learned Counsel, would be in the aforesaid background that the entire complaint and proceedings have to be quashed. It is not so simple a matter as has been contended on behalf of the Petitioner.

6. The powers vested in this Court u/s 482 of the Code of Criminal Procedure are independent powers and those can be favourably exercised in the event to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In the present case, there does not appear to be any ground whatsoever to invoke these exceptional powers which are to be used very sparingly in favour of the Petitioner.

7. The order passed by the trial magistrate on 5.6.1993 is being reproduced hereunder for the sake of convenience:

5.6.1993

Present: Complainant Anil Kumar, Personal-cum- Law Officer present in person.

Sh. Raj Kumar Garg, Advocate, for complainant.

The accused is not present.

It is noticed at this stage, that no formal order has been passed in respect of the summoning of proposed accused. This complaint was received by transfer from the court of Ld. C.J.M. The perusal of the case file reveals that on 23.4.92 in the Court of learned CJM, Nahan the accused was ordered to be summoned for

30.5.1992. The close scrutiny of the earlier Zimny orders on the file does go to show that the proposed accused was ordered to be summoned for a particular offence. The Ld. Counsel for the complainant Shri R.K. Garg, Adv. emphatically stated that the matter was argued at length by him before the then learned CJM, Nahan and that the accused was also ordered to be summoned for the offence u/s 409 of the I.P.C. but the said contention cannot be accepted particularly as there is no reference in the file that the arguments were heard on any day. Moreover, as there is no order in respect of the summoning of the accused, therefore, this Court is left with no option but to rehear the complainant and thereafter to pass appropriate orders in respect of the summoning of the proposed accused. Accordingly, the matter be listed on 10.6.1990 for consideration.

8. The complaint against the present Petitioner was filed on 29.5.1991 and it was adjourned for recording preliminary evidence. The preliminary evidence which included the recording of the statement of the complainant, was examined on 26.6.1991 and the case was adjourned for 24.8.1991. Thereafter, the case had been adjourned for one reason or the other and as the record revealed, at no occasion the trial magistrate appreciated the preliminary evidence and passed any order summoning the accused. However, it appears that due to some bonafide mistake by office or by the Court, it was recorded on the 23.4.1992 that the summons of accused has not been received back, who was ordered to be summoned for 30.5.1992 and thereafter the case has been adjourned on one ground or the other and it was on 17.4.1993 when the accused was represented by his Counsel and on that date, an application on behalf of the accused for his exemption was filed. The trial magistrate ordered that before any order on the aforesaid application was passed, let the accused be produced at first in the court and thereafter appropriate order in the said application shall be passed. It was observed, that the learned Counsel for the accused had undertaken to produce the accused on the fixed date of hearing and subject to that undertaking the file was ordered to be put up on 5.6.1993 on which date a detailed order was passed which has been reproduced earlier.

9. In the aforesaid context it is being contended on behalf of the Petitioner that the trial magistrate had absolutely no authority to pass the order dated 5.6.1993 which amounted to reviewing its own earlier order whereby the accused had been ordered to be summoned in the present case. It is now to be seen whether the order passed on 5.6.1993 amounted to exercise the power of reviewing the earlier order or it amounted to something else.

10. There is no dispute to the proposition that after recording the preliminary evidence by the trial magistrate, the court has to pass an appropriate order for issue of process against the accused u/s 204 of the Code of Criminal Procedure which runs as under:

204. Issue of Process.-(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summon-cases, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrants shall be issued against the accused under Sub-section (1) until a list of witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under Sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this Section shall be deemed to affect the provisions of Section 87.

11. In the present case the aforesaid provision provided, in case the magistrate taking cognizance of an offence was of the opinion that there was sufficient ground for proceeding against the accused, then alone he would pass appropriate order for issuance of the process. However, in case the magistrate after considering the statements on oath (if any of the complainant and of the witnesses and the result of the inquiry of investigation, if any, u/s 202 of the Code of Criminal Procedure), he is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint and in every such case, he shall briefly record the reasons for doing so. This is the requirement of Section 203 of the Code of Criminal Procedure.

12. Admittedly in-so-far as the present case is concerned, there is neither any order passed u/s 203 of the Code of Criminal Procedure dismissing the complaint nor any order u/s 204 of the Code of Criminal Procedure for issuance of process against the accused. The trial magistrate vide his order dated 5.6.1993 reproduced above, only ordered for re-hearing the complainant on the basis of the preliminary evidence examined and thereafter to pass appropriate order in respect of the summoning of the proposed accused. On the basis of the preliminary evidence, the trial magistrate could even dismiss the complaint also or could pass appropriate order for summoning the accused. That state has yet to come. I think the aforesaid order dated 5.6.1993 passed by the trial magistrate was the most appropriate and legal order appeared to have been passed under the circumstances. It cannot be said to be an order reviewing the earlier order. Actually there is no order at all in the eyes of law passed by the magistrate after recording the preliminary evidence. Under the Code of Criminal Procedure as pointed out earlier, after recording preliminary evidence and after hearing the complainant, the court has to pass order u/s 203 of the Code of

Criminal Procedure or u/s 204 Code of Criminal Procedure which exercise has not been at all done by the trial magistrate at any stage of the proceedings. Simply because there is an order alleged to have bonafide been passed whereby it was reported that the summons of the accused have not been received back, it will not amount that order to have been passed u/s 204 of the Code of Criminal Procedure. It is an order whereby it is not reflected that the accused was ordered to be summoned after assessing the preliminary evidence and after application of mind the magistrate came to the conclusion that there was sufficient ground for proceeding against the accused. Thus, the order passed on 5.6.1993 only reflected that the magistrate wanted to pass an appropriate order in accordance with the provisions of the Code of Criminal Procedure after preliminary evidence and the statement of the complainant had been recorded. I think that was a legal and only valid order which was required to be passed under the circumstances and under the provisions of the Code of Criminal Procedure.

13. It might be said that the trial magistrate had no power under the Code of Criminal Procedure to review his own orders, but the fact remains that the order dated 5.6.1993 cannot be, on any ground whatsoever said to be an order passed by the trial magistrate invoking any power of reviewing the earlier order. Actually the order being passed is for passing appropriate order under the Code of Criminal Procedure which the magistrate is required to pass either dismissing the complaint or summoning the accused as discussed above.

14. In view of the aforesaid circumstances, the grievance of the Petitioner does not fall within the ambit of Section 482 of the Code of Criminal Procedure inasmuch as the interference of this Court is not at all required, especially when there is nothing in this case whereby it could be ascertained that the process of law has been abused and some substantial injustice has been caused to the aggrieved party. But on the other hand, it stood established that the order passed under reference was so passed in order to comply with the statutory provisions of the Code of Criminal Procedure.

15. No other point has been stressed.

16. In view of the foregoing reasons, this petition fails and is accordingly dismissed. Complainant is directed to appear before the Chief Judicial Magistrate, Nahan, on 3rd July, 1995. Learned Chief Judicial Magistrate, Nahan, is directed to proceed with the complaint and dispose it of in accordance with law and in terms of the observations made herein above. The record of the complaint, together with a copy of this order, be sent to the Chief Judicial Magistrate, Nahan, before the aforementioned date to enable him to proceed further with the matter.