
(2002) 07 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 17175-M of 1996

Group Capt. Mohinder Singh Sihota

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 365, 380, 447, 452

Citation : (2002) 5 CriminalCC 292 : (2002) 3 RCR(Criminal) 803

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : I.P. Singh, for the Appellant; G.P. Sing Raja, AAG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Vinay Mittal, J.—The petitioner has filed the present petition u/s 482 Cr.P.C. for quashing of Criminal Complainant No.25 of July 29, 1994 Annexure P-1, summoning order dated July 29, 1995 Annexure P-2 and the orders dated August 16, 1996 passed by the Judicial Magistrate, Anandpur Sahib, as Annexure P-5 with the present petition.

2. During the course of arguments Mr. I.P. Singh, learned Counsel for the petitioner has confined his prayer made for the petitioner has confined his prayer made in the present petition with regards to the orders dated August 16, 1996 Annexure P-5 passed by the learned Judicial Magistrate, Anandpur Sahib. He has specifically given up the prayers for quashing of the complaint as well as the summoning order made in the petition.

3. Some facts relevant for the decision of the present controversy may be noticed.

4. The petitioner was working as Principal and Director of Sri Dasmesh Academy, Anandpur Sahib, which is a residential school and respondent No.2 Gurmeet

Singh Bhullar was serving as a teacher in the aforesaid Academy, it has been stated that the aforesaid teacher Gurmeet Singh Bhullar was charge-sheeted for misconduct and subsequently after holding an enquiry was ordered to be removed vide an order passed by the petitioner on February 24, 1995. It is stated that in fact because of the passing of the aforesaid order against him, the aforesaid respondent No.2 Gurmeet Singh Bhullar filed a complaint against the petitioner as well as one Baldev Singh, the Estate Officer of the Academy under Sections 452, 380, 506 and 365 read with Section 34, IPC. A copy of the aforesaid complaint has been attached as Annexure P-1. After recording of the aforesaid evidence, the learned Trial Magistrate passed a summoning order (Annexure P-2) on July 29, 1995 under Sections 447, 380, 506 read with Section 34, IPC.

5. Subsequently, the petitioner filed an application before the learned Trial Magistrate to reconsider the summoning order and to drop the proceedings and to dismiss the complaint. The learned Trial Magistrate vide his orders dated August 16, 1996 (appended as Annexure P-5 with the petition) dismissed the application. It is this order Annexure P-5 to which the challenge has been confined now by the petitioner.

6. I have heard the learned Counsel for the parties and have also gone through the order Annexure P-5 passed by the learned Trial Magistrate. At this stage, I do not want to express my opinion with regard to the controversy involved in the present case and as to whether the complaint or summoning order are liable to be quashed since I feel that the order, Annexure P-5, itself is not legally sustained and the matter has to be reconsidered by the learned Trial Magistrate.

7. A perusal of the order Annexure P-5 shows that the learned Trial Magistrate while noticing the various submissions made by the petitioner that if the matter was to be reconsidered by the Trial Magistrate at that stage, the same would actually amount to review or reconsideration of the earlier summoning order. In fact the learned Trial Magistrate observed as follows:

I am of the view that this law mainly emphasise upon the reconsideration of the complaint but at this stage the Court is not bound to reconsider the contents of the complaint rather the entire evidence has already been appreciated along with the allegations contained in the complaint, so the question of reconsideration of the complaint will amount to the review of the order passed by this Court already. Apart from this I am of the view that the facts as mentioned in the above cited authority are not fully applicable to the present case. So I do not feel it appropriate to reconsider the summoning order and dismissing the complaint. It is worthwhile to mention if the accused-appellants were not satisfied with the summoning order they were having the remedy to go into revision in the Court of learned Sessions Judge, Rupnagar which they have not. So on this ground also I do not think it proper to review or reconsider the order which has been passed by this Court.

8. In fact that observations made by the learned Trial Magistrate run contrary to the law laid down by the Apex Court in K.M. Mathew v. State of Kerala & Anr., 1992(1) RCR 232, wherein it has been observed as follows:

It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused.

9. Thus, it is always open to an accused or a person summoned in a complaint to appear before the Trial Magistrate and show to the Trial Magistrate who had passed the summoning order that no case was made out against the summoned accused or that the proceedings against him are liable to be dropped.

10. In these circumstances, the order Annexure P-5 is hereby quashed and the matter is remitted back to the learned Trial Magistrate, who shall rehear and reconsider the request of the petitioner for dropping of the proceedings and pass an order afresh in accordance with law.

11. Since the matter has remained pending in this Court for a very long time and there had been stay of further proceedings, therefore, the learned Trial Court is hereby directed to pass a fresh order as ordered above, within a period of two months from the date of receipt of certified copy of this order.