
(2010) 02 P&H CK 0261

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-13680 of 2008 (O and M)

Manphool and Another

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 239, 245, 482
Penal Code, 1860 (IPC) — Section 34, 427, 435, 506

Citation : (2010) 02 P&H CK 0261

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : G.S. Sidhu, for the Appellant; J.S. Sandhu, AAG and Sandeep Jasuja, for the Respondent

Final Decision : Allowed

Judgement

Sabina, J.—Petitioners have filed this petition u/s 482 of the Code of Criminal Procedure for quashing of the order dated 25.8.2007 (Annexure P-5) passed by the Additional Sessions Judge, Ferozepur. Further prayer is for restoration of order dated 9.5.2003 (Annexure P-4) passed by the Judicial Magistrate, Ist Class, Abohar, whereby the application of dropping the proceeding in case FIR No. 94 dated 12.6.1998 under Sections 435/427/506/34 of the Indian Penal Code (IPC for short) registered at Police Station Sadar Abohar, District Ferozepur was accepted.

2. Learned Counsel for the petitioners has submitted that FIR in question was lodged by the complainant. During investigation of the case, complainant-respondent No. 2 filed a private complaint against the petitioners and Sushil Kumar under Sections 435/427/506/34. The said complaint was dismissed by the Sub Divisional Judicial Magistrate, Abohar vide order dated 24.5.2000 and the said order was upheld by the Additional Sessions Judge, Ferozepur vide order dated 19.2.2003. In the police case, cancellation report was submitted by the Investigating Officer. However, the Magistrate did not agree with the cancellation

report and summoned the petitioners under Sections 435/427/506/34 IPC vide order dated 13.7.2001 and it was further ordered that the case be registered as police challan. Thereafter, the petitioners were discharged vide order dated 9.5.2003 by the Magistrate on an application moved by the petitioners. The said order was, however, set aside by the Additional Sessions Judge, Ferozepur vide order dated 25.8.2007. Although an application was moved by the petitioners u/s 245 Cr.P.C. but the same was liable to be treated u/s 239 Cr.P.C. as the present case was not a private complaint but it was a police challan. Hence, the petitioners could be discharged u/s 239 Cr.P.C.

3. Learned State counsel and learned Counsel for respondent No. 2, on the other hand, have submitted that the Magistrate had no power to review the summoning order in view of law laid down by the Apex Court in *Adalat Prasad v. Roop Lal Jindal* 2004 (4) RCR (Criminal) 1

4. After hearing learned Counsel for the parties, I am of the opinion that this petition deserves to be allowed.

5. Admittedly, respondent No. 2 had lodged FIR No. 94 dated 12.6.1998 under Sections 435/427/506/34 IPC against the petitioners and their co-accused. Thereafter, respondent No. 2 filed a private complaint on 1.9.1998 against the petitioners and Sushil Kumar under Sections 435/427/506/34 IPC. The said complaint was dismissed by the Sub Divisional Judicial Magistrate, Abohar vide order dated 24.5.2000 (Annexure P-2) after respondent No. 2 had led his preliminary evidence. It was held that the complainant should file a civil suit claiming damages, if so advised, and no ground for taking cognizance of the alleged offence against the accused was made out. The said order was upheld by the learned Additional Sessions Judge vide order dated 19.2.2003 (Annexure P-3) as the act of the accused did not constitute an offence falling within the meaning of Sections 435/427/506/34 IPC. Cancellation report was submitted by the Investigating Agency after investigation of the case. However, the said cancellation report was not accepted by the Sub Divisional Judicial Magistrate and vide order dated 13.7.2001 the petitioners and Sushil Kumar were ordered to be summoned for having committed an offence punishable under Sections 435/427/506/34 IPC. It was further ordered that the case be registered as police challan. On appearance, the petitioners moved an application u/s 245 Cr.P.C. for review of the summoning order. However, in the present case since the case was ordered to be registered as a police challan, the Magistrate was to follow the procedure as envisaged in Chapter XIX of the Code.

6. Section 239 Cr.P.C. reads as under:

When accused shall be discharged:- If, upon considering the police report and the documents sent with it u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record

his reasons for so doing.

7. So far as Section 245 Cr.P.C. is concerned, the same relates to discharge of accused in a case instituted otherwise than on a police report. There is no dispute regarding the legal preposition that the Magistrate has no power to review the summoning order. Remedy of an aggrieved party lies u/s 482 Cr.P.C. as has been held in Adalat Prasad 's case (Supra). However, in the present case, the Magistrate had to proceed u/s 239 Cr.P.C.. Due to inadvertence, the application was moved by the petitioners under a wrong provision. Filing of application under such wrong provision would not dis-entitle the petitioners for being discharged to which they are otherwise entitled u/s 239 Cr.P.C. Since qua the same occurrence the private complaint filed by respondent No. 2 had been dismissed, the petitioners in the police case were also liable to be discharged. In these circumstances, learned Additional District Judge had erred in setting aside the order passed by the Magistrate dated 9.5.2003. Hence, order dated 9.5.2003 is liable to be upheld though for different reasons.

8. Accordingly, the present petition is allowed. Order dated 25.8.2007 (Annexure P-5) passed by the Additional Sessions Judge, Ferozepur is hereby quashed and order dated 9.5.2003 (Annexure P-4) passed by the Judicial Magistrate, Ist Class, Abohar is upheld.