
(2010) 11 P&H CK 0587
In the Punjab And Haryana At Chandigarh
Case No : CRM No. M-1461 of 2008

Pawan Mehta and Manoj Gupta

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 500

Citation : (2010) 11 P&H CK 0587

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Judgement

Mehinder Singh Sullar, J.—The epitome of the facts, which needs a necessary mention, for a limited purpose of deciding the core controversy involved in the instant petition and emanating from the record, is that on 7.7.2003, main accused Swami Sada Nand, Incharge Daya Nand Math, Dinanagar, was stated to have delivered some speech on TV channel and used very defamatory and un-parliamentary language against complainant Arvind Mehta son of Hari Dass (Respondent No. 2). According to the complainant, the speech delivered by Swami Sada Nand accused defamed him, damaged his reputation and he became very small in the eyes of the public. Inter-alia on the basis of aforesaid allegations, the complainant originally filed the complaint (Annexure P1) against the single accused Swami Sada Nand and cited the Petitioners as witnesses. As they did not support the complainant in preliminary evidence, therefore, their names were subsequently added in the list of the accused, vide order dated 14.11.2006, which is in the following manner:

Inadvertently statement of complainant was left to be recorded in Pre summoning evidence. Hence, on application deposition of complainant is allowed. On application of complainant names of accused No. 2 and 3 are also added. For consideration on summoning to come up on 20.11.2006.

2. Sequelly, the trial Magistrate summoned all the three accused, namely, Swami

Sada Nand, Pawan Gupta and Manoj Gupta, by virtue of summoning order dated 20.11.2006 (Annexure P2). Petitioners-accused, owners of the TV channel, did not feel satisfied and filed the present petition for quashing the complaint (Annexure P1) and summoning order (Annexure P2), invoking the provisions of Section 482 Code of Criminal Procedure. That is how, I am seized of the matter.

3. After hearing the learned Counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, the instant petition deserves to be partly accepted in this context.

4. What is not disputed here is that originally, the complainant filed the complaint against Swami Sada Nand accused on 14.8.2003 and Petitioners, who were stated to be owners of the TV channel at the relevant time, were cited as witnesses. Since the Petitioners did not support the complainant in the preliminary evidence, so, they were subsequently arrayed as additional accused, by way of cryptic order by the Magistrate. Not only that, the Petitioners have specifically mentioned in the petition that their names have been wrongly included in the list of the accused without any application in this respect. The allegations have not been specifically denied by the complainant in his reply. That means, the Petitioners have been involved in the case without any proper application in this regard. They were summoned by the Magistrate in a routine fashion u/s 500 IPC without any cogent basis.

5. The Hon'ble Apex Court in case Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, has ruled (para 28) as under:

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

6. Meaning thereby, the Petitioners were only summoned as accused as they were stated to be owners of the TV channel at the relevant time and no other overt act or role is attributed to them. In that eventuality, before arraying them as an accused, it was the duty and the Magistrate was legally obliged to apply its judicious mind and come to a definite conclusion that the allegations alleged against the Petitioners squarely fall within the ambit of offence u/s 499

punishable u/s 500 IPC, which is totally lacking in the instant case. In other words, the Magistrate completely ignored the legal principles of summoning the Petitioners as accused in this relevant connection. Therefore, the impugned summoning order (Annexure P2) qua the Petitioners, cannot possibly be sustained, in the obtaining circumstances of the case.

7. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

8. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the case, the instant petition is partly accepted. Consequently, the summoning order (Annexure P2) in respect of the present Petitioners is hereby set aside.

9. Needless to mention that the trial Magistrate may apply its judicious mind on the entire matter afresh in view of the aforesaid observations and, keeping into focus the period of limitation to take cognizance as well and pass an appropriate order in accordance with law in this context.