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*J.S. Mehndiratta*

*Before Mehinder Singh Sullar, J.*

**VISHAL SINGLA—Petitioner**

*versus*

**STATE OF HARYANA & OTHER—Respondents**

**Crl.M. No. M-1545 of 2011**

January 5, 2012

*Code of Criminal Procedure, 1973 - S.482, 154, 169 & 170  
- Indian Penal Code, 1860 - S.165, 166, 167, 182, 193, 196, 323, 324,  
506 & 120-B - Petitioner got registered a case against private  
respondents - Police forwarded cancellation report - Criminal*

*complaint filed - Magistrate summoned private respondents - SIO filed Calendra at the same time to prosecute complainant under section 182 of IPC - Held, proceedings under section 182 not maintainable - Since private respondents summoned - Matter subjudice - Cannot be said information false - Proceedings under section 182 quashed.*

*Held*, that it is not a matter of dispute that the petitioner has already filed a complaint (Annexure P4) in regard to the same incident and after taking into consideration the preliminary evidence, the trial Magistrate has summoned the private respondents, vide summoning order (Annexure P-5). That means, the subject matter of the information is sub judiced and the trial Magistrate is seized of the matter, relatable to truth or otherwise of the version projected by the petitioner in this context. In that eventuality, the proceedings under Section 182 IPC are not legally maintainable.

(Para 16)

*Further held*, that once the petitioner has filed a private complaint and the accused have been summoned, then it cannot be said that the information supplied by the petitioner was false. Therefore, the argument of the learned counsel for the petitioner that in view of the pendency of complaint and summoning order in respect of the same offences, the proceedings under Section 182 IPC against the petitioner cannot be permitted to continue, has considerable force and the contrary contentions of the learned counsel for respondents 'stricto sensu' deserve to be and are hereby repelled under the present set of circumstances.

(Para 17)

Sanjay Gupta, Advocate, *for the petitioner*:

Sukhwinder Singh Nara, Senior Deputy Advocate General, Punjab  
*for respondent Nos. 1 & 2.*

S.S. Dinarpur, Advocate, *for respondent Nos. 3 & 4.*

**MEHINDER SINGH SULLAR, J. (ORAL)**

(1) The contour of the facts, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record, is that, in the wake of medical ruqqa,

(Mehinder Singh Sullar, J.)

HC Salandi Kumar went to Civil Hospital, Yamunanagar and collected the MLR. He recorded the statement of injured-petitioner Vishal Singla, which was to the following effect:-

*"I reside at the above mentioned address and I have got a shop of ready made garments in Chhachhrauli. The business in my shop was in recession. Jagdish Madan son of Shadi Lal r/o Khatri and Avinash Kumar son of Phul Chand caste Brahmin r/o Chhachhrauli had been visiting my shop quite often. They told me that as my business was in recession and therefore, they could arrange a Govt. job for me and in lieu of it they would charge a sum of Rs.2 lacs because they have got very good influence. Jagdish Madan and Avinash Kumar came to my residence on 20.6.2007 in the evening and demanded a sum of Rs.2 lacs. At that time my father and Baldev Singh son of Gian Singh r/o Chhachhrauli were present and that my father gave a sum of Rs.2 lacs to them and they promised that by August, 2007 I would get a job but till today I did not get any job therefore we demanded the money back but they continued putting off the matter. Yesterday, i.e. on 30.10.2008 in the evening I went to the shop of Jagdish Kumar Madan to demand money back and Avinash Kumar was present there. They told that on the next day i.e. 31.10.2008, my money amounting to Rs.2 lacs would be returned to me and I should reach Fawara Chowk Yamuna Nagar at 1.30 p.m. and accordingly as told I reached Fawara Chowk Yamuna Nagar at 1.30 pm. Jagdish Madan and Avinash Kumar had already present there along with one Honda Eterno of black colour and they told me to sit on the same. I took the seat between those two persons and they took me from city center, ahead of Shamshan Ghat. I enquired from them as to which place they were asking me and then they stopped Honda Eterno and pushed me and threw me on the road and started giving fist blows. Jagdish Madan took out from his pocket a knife and gave a blow which hit the left shoulder and second blow hit my right shoulder and Avinash*

*Kumar gave kick blows which hit my left hand and then both these persons gave kick blows on various part of my body. I raised alarm maar ditta maar dita and on hearing the alarm, Gurcharan Singh son of S. Ishar Singh r/o Ranjit Gali and Gurjinder Singh son of Ajaib Singh r/o Shahpur PS Bilaspur came to the spot and they rescued me from them. Had they not rescued me, more injuries would have been caused to me. While running away they stated that I have been saved that day but in future they would finish me and then both of them ran away from the spot alongwith Honda Eterno. Gurcharan Singh got me admitted in civil hospital Yamuna Nagar where I am under treatment. Legal action may be taken against Jagdish Madan and Avinash Kumar. I have heard the statement and it is correct."*

(2) On the basis of aforesaid allegations, a criminal case was registered against the accused-private respondents, on accusation of having committed the offences punishable under sections 323, 324 and 506 read with section 34 IPC by the police of Police Station City Yamuna Nagar.

(3) During the course of investigation, the SHO of the Police Station, City Yamuna Nagar came to the conclusion that the petitioner has got registered a false case against the private respondents and recommended for cancellation of the case. The Superintendent of Police forwarded the cancellation report to the Magistrate, by virtue of report dated 28.4.2009 (Annexure P1).

(4) Aggrieved by the action of the police, the petitioner filed a protest petition (Annexure P3) in the trial Court. He has also filed a criminal complaint (Annexure P4) against all the accused-respondents for the commission of offences punishable under sections 165, 166, 167, 193, 196, 323, 324, 506 and 120-B IPC. Taking cognizance of the offences, the Magistrate summoned the private respondents as accused to face trial under sections 323, 324 and 506 read with section 34 IPC, by way of summoning order dated 11.3.2010 (Annexure P5).

(5) At the same time, the SHO of Police Station City Yamuna Nagar prepared and filed a calendra (Annexure P2) to prosecute the petitioner-complainant under section 182 IPC in this regard.

(6) The petitioner did not feel satisfied with the initiation of proceedings under section 182 IPC and preferred the present petition, challenging the impugned calendra (Annexure P-2) and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.P.C. That is how, I am seized of the matter.

(7) After hearing the learned counsel for the parties, going through the record with their valuable help and after deep consideration over the entire matter, to my mind, the instant petition deserves to be accepted in this context.

(8) As is evident from the record that the police initiated criminal proceedings against the petitioner, as contemplated under Section 182 IPC only, on the basis of report dated 3.9.2009 (Annexure P-2) of SHO of the Police Station, which is to the following effect:-

*"After registering the case the investigation was taken in hand and during investigation the case was found to be false and that Jagdish Madan and Avinash Kumar had filed cases against Vishal Singla and Vishal Singla self suffered these injuries and got a false case registered. The DDA has given an opinion that action may be initiated under section 182 IPC against the complainant and, therefore, Kalendra was prepared and accused be summoned and tried. List of witnesses is enclosed."*

(9) Not only that, in the wake of criminal complaint (Annexure P4) filed by the petitioner and the accused respondents have been summoned by the Magistrate to face trial under sections 323, 324 and 506 read with section 34 IPC through the medium of summoning order (Annexure P5).

(10) Such thus being the position on record, now the short and significant question, though important, that arises for determination in the present petition is, as to whether the proceedings under section 182 IPC against the petitioner are maintainable or not?

(11) Having regard to the rival contentions of learned counsel for parties, to my mind, the answer must obviously be in the negative and the criminal prosecution under section 182 IPC cannot legally be initiated against the petitioner in this regard.

(12) The bare perusal of the indicated report would reveal that the SHO has just ignored the oral as well as medical/documentary evidence with impunity, in a very casual manner and observed without any basis that the private respondents have been falsely implicated. To me, the Investigating Officer has exceeded his jurisdiction of investigation, as envisaged under Chapter XII of Cr.P.C., which deals with the receipt of information by the police and their power to investigate a criminal case. Section 154 Cr.P.C. postulates that as soon as, the police officer received the information of a cognizable case, he has to reduce the same into writing, after obtaining the signatures of the complainant in token of its correctness.

(13) Sequely, Section 169 Cr.P.C. posits that if, upon an investigation under this Chapter, it appears to the officer In-charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.

(14) Likewise, Section 170 Cr.P.C. further envisaged that if, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(15) In the instant case, the Investigating Officer has slipped into a legal deep error, exceeded his statutory investigational jurisdiction and illegally assumed the function of a criminal Court. Thus, the very initiation of criminal proceedings under section 182 IPC against the petitioner on the basis of illegal and non est report (Annexure P2), is nothing, but a sheer abuse of process of law, cannot legally be permitted to continue and is liable to be quashed in this relevant behalf.

(16) This matter can also be viewed from a different angle. It is not a matter of dispute that the petitioner has already filed a complaint (Annexure P4) in regard to the same incident and after taking into consideration the preliminary evidence, the trial Magistrate has summoned the private respondents, vide summoning order (Annexure P-5). That means, the subject matter of the information is sub judiced and the trial Magistrate is seized of the matter, relatable to truth or otherwise of the version projected by the petitioner in this context. In that eventuality, the proceedings under Section 182 IPC are not legally maintainable.

(17) An identical question came to be decided by this Court in cases *Ramesh Chand versus State of Haryana (1)*, and *Kehar Singh versus State of Punjab CRM No. M-7093 of 2009* decided on 25.10.2010. Having considered the matter deeply, it was ruled that once the petitioner has filed a private complaint and the accused have been summoned, then it cannot be said that the information supplied by the petitioner was false. Therefore, the argument of the learned counsel for the petitioner that in view of the pendency of complaint and summoning order in respect of the same offences, the proceedings under Section 182 IPC against the petitioner cannot be permitted to continue, has considerable force and the contrary contentions of the learned counsel for respondents 'stricto sensu' deserve to be and are hereby repelled under the present set of circumstances. The ratio of law laid down in the aforesaid judgments "mutatis-mutandis" is applicable to the facts and circumstances of this case and is the complete answer to the problem in hand.

(18) In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of complaint (Annexure P4), the instant petition is hereby accepted. The initiation of proceedings under Section 182 IPC, vide report (Annexure P-2) and all subsequent proceedings arising thereto are hereby quashed, in the obtaining circumstances of the case.

(19) Needless to state that, nothing observed here-in-above, would reflect, in any manner on merits of the main complaint case, as the same has been so recorded for a limited purpose of deciding the instant controversy under Section 182 IPC.

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*A Aggarwal*