

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-14928-2015

Date of decision : 07.05.2015

Juber and others

.....Petitioners

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sanjeev K. Panwar, Advocate for petitioners.

DARSHAN SINGH, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (here-in-after called 'Cr.P.C.') for quashing the order dated 13.08.2014 passed by learned Judicial Magistrate First Class, Hathin, whereby the petitioners have been summoned to face the trial for the offences punishable under Sections 147, 324, 427, 436, 452, 506 read with Section 149 of the Indian Penal Code, 1860 (here-in-after called 'IPC') in a private complaint filed by respondent No.2 and the revisional order dated 11.02.2015, passed by

learned Sessions Judge, Palwal.

2- The brief facts of the prosecution case are that the father-in-law of respondent No.2/complainant filed a civil suit against the petitioners in the Court of learned Additional Civil Judge (Sr. Divn.), Hathin and vide order dated 29.09.2011, the parties were directed to maintain the status quo with regard to the possession over the shop in dispute. On 24.10.2011 at about 11:30 a.m., the accused persons formed an unlawful assembly and in prosecution of their common object, they entered into the shop of the complainant and exhorted her to vacate the shop or they will celebrate Diwali. On hearing the noise, Manish, the husband of the complainant, her mother-in-law Anita and brother-in-law Gagan reached there. In their presence, the accused persons extorted to kill the complainant by setting her ablaze. Accused Rahila took the plastic cane from the hands of accused Samiri and sprinkled petrol on the person of complainant, her mother-in-law, husband and brother-in-law. Thereafter, petitioner accused Juber lit the match stick and threw the same over the complainant and her mother-in-law. Accused Akram threw a lightening match stick on the person of her brother-in-law Gagan and husband Manish. All of them were burnt. The shop was also burnt. In the meanwhile, her father-in-law Shiv Shankar and prosecution witnesses Issa, Hanif, etc. reached at the spot and saved the complainant and her family members by extinguishing the fire. The accused left the place after extending the threat to kill them in case they did not vacate the shop. The injured were taken to General Hospital, Hathin. From there, they

were referred to Safdarjung Hospital, Delhi and remained admitted there till 27.10.2011. The matter was reported to the police and a case bearing FIR No.305 dated 25.10.2011 was registered against the accused. However, the accused persons were having the political back and they also get a false case registered against the complainant and her family members. The FIR got registered by the complainant was ordered to be cancelled. A cancellation report was prepared on 30.08.2012. Hence, the private complaint.

3- On appreciating the preliminary evidence recorded by the learned Magistrate, he passed the impugned summoning order. Both the parties preferred revision against the aforesaid summoning order. The revision filed by the present petitioners was dismissed and the revision filed by the complainant/respondent No.2 was partly allowed. The matter was remanded to the learned Magistrate with direction to pass a fresh order qua the summoning of the petitioners/accused for commission of the offence punishable under Sections 148 and 307 IPC after considering the evidence available on record keeping in view of the observations recorded in the impugned order dated 11.02.2015 by the learned Sessions Judge.

4- Aggrieved with the aforesaid orders, the present revision petition has been preferred by the accused-petiteness Juber and others.

5- I have heard learned counsel for the petitioners and have gone through the paper-book carefully.

6- Learned counsel for the petitioners contended that

regarding this very incident, a police case bearing FIR No.305 dated 25.10.2011 was got registered by respondent No.2 but after thorough investigation the said FIR was cancelled as the allegations were not substantiated, but this fact has not been taken into consideration by the Courts below.

7- He further contended that no inquiry as required under Section 202 Cr.P.C. has been got conducted by the learned Magistrate before passing the summoning order, so the mandatory provisions of Section 202 Cr.P.C. have been violated.

8- I have duly considered the aforesaid contentions. The petitioners have already availed the remedy of revision against the summoning order dated 13.08.2014 passed by the learned Judicial Magistrate First Class, Hathin. Learned Sessions Judge, by passing the detailed reasoned judgment, has dismissed the revision filed by the petitioners. The scope of the present petition is very limited. Learned counsel for the petitioners has raised only two issues that the learned Magistrate has not considered the fact that police case got registered by the complainant has resulted into the cancellation report and he has not got conducted any inquiry under Section 202 Cr.P.C. even though, petitioners No.4 to 8 were residents of Distt. Mewat i.e. beyond the jurisdiction of learned Judicial Magistrate, Hathin. But these contentions have no substance. Mere filing of the cancellation report by the police is no ground to quash the impugned orders. Even if the police files a cancellation report, the aggrieved person has a right to file the private

complaint and if he satisfies the Court by leading the evidence that there are sufficient grounds to proceed against the accused, there is no bar in passing the summoning order for the trial of the accused in view of Section 190(1) (a) Cr.P.C. In the instant case also, the oral as well as documentary preliminary evidence has been adduced before the learned Magistrate in the shape of the statements of complainant and her witnesses as well as the medical record about their treatment and medico legally examination. Thus, mere this fact that the police has filed the cancellation report in case FIR No.305 dated 25.10.2011, registered on the statement of respondent No.2 for this very incident, is no ground to find any illegality in the impugned order. Moreover, the petitioner has not placed on file any material to show that said cancellation report was finally accepted by the Magistrate.

9- The present complaint was filed for the offences punishable under Sections 147, 148, 452, 436, 324, 307, 427 and 506 IPC. The offences punishable under Sections 307 and 436 IPC are triable by Court of Sessions. The proviso (a) to Section 202 Sub-section (1) Cr.P.C. provides that no direction for investigation shall be made where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions. The learned Magistrate has summoned the petitioners for the offences punishable under Sections 147, 324, 427, 436, 452, 506 read with Section 149 IPC. The offence punishable under Section 436 IPC is triable by the Court of Sessions. So, the Magistrate can not get the matter investigated under Section 202

Cr.P.C. before passing the impugned summoning order.

10- Thus, keeping in view my aforesaid discussion, I do not find any material illegality in the impugned orders to invoke the extraordinary jurisdiction under Section 482 Cr.P.C.

11- Thus, the present petition has no merits and the same is hereby dismissed.

07.05.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**