

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-M-17830 of 2015
Date of decision: 28.05.2015

Mohinder Singh & others

-----Petitioner (s)

V/s

The State of Punjab & another

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Mr. R.S. Aulakh, Advocate
for the petitioner(s).

HARI PAL VERMA, J.

Petitioners have filed the present petition under Section 482 CrPC for quashing the complaint No.RT-148/19.2.10/21.9.212 dated 19.2.2010 (Annexure P-7) titled as *Kuldip Singh Vs. Mohinder Singh and others* under Sections 307/326/324/323/355/452/114/295-A/120-B/34/148/149 IPC and impugned summoning order dated 2.6.2012 (Annexure P-8) passed by Judicial Magistrate Ist Class, Faridkot.

Initially, on the statement of Kuldip Singh, respondent no.2, an FIR No.35 dated 22.3.2009 under Sections 324/325/355/34 IPC was registered against the petitoners at

Police Station Sadar Faridkot. However, when the case was investigated by the police, the same was found to be false and on the application of respondent no.2, the investigation was transferred by the SSP, Faridkot to CIA staff. But the In-charge of the CIA staff, after investigation, also found the case to be false. Accordingly, cancellation report was forwarded to the Magistrate, as provided under Section 173 CrPC.

Considering the FIR to be false, the Inspector General, Zonal, Police, Patiala after perusing the cancellation report dated 22.5.2010, directed the DIG, Faridkot Range, Bathinda to initiate proceedings under Section 182 IPC against respondent No.2 Kuldip Singh for registration of a false case against the petitioners.

However, after presentation of report under Section 173 CrPC for cancellation of the case before the CJM, Faridkot, the Court ordered for further investigation of the matter and after investigation of the matter by DSP, Kotkapura, the case was again found to be false and cancellation report was again recommended to be filed. Accordingly, on 28.12.2010, the SHO, Police Station, Sadar Faridkot again submitted the cancellation report while giving all the details in the report. Thereafter, after a period of more than 11 months, respondent no.2 filed a complaint No.RT-148/19.2.10/21.9.212 dated 19.2.2010 (Annexure P-7) titled as *Kuldip Singh Vs. Mohinder Singh and others* under Sections 307/326/324/323/355/452/114/295-A/120-B/34/148/149

IPC in the Court of CJM, Faridkot. Learned CJM proceeded in the complaint against the petitioners and Sarbjit Kaur and accordingly, the petitioners were ordered to be summoned under Sections 452/326/324/323/295-A/353/34 IPC vide order dated 2.6.2012 passed by Judicial Magistrate Ist Class, Faridkot.

It is the aforesaid complaint as well as the summoning order which are subject matter of challenge before this Court.

Learned counsel for the petitioners has submitted that the bare perusal of complaint dated 19.2.2010 (Annexure P7) filed by respondent no.2 against the petitioners clearly shows that no case is made out against them, especially when the allegations, as levelled in the complaint have already been looked into by the police in FIR No.35 dated 22.3.2009 under Sections 324/325/355/34 IPC registered at Police Station Sadar Faridkot and has found the same false. The contents of the complaint do not make out a case for summoning of the petitioners. The complaint is false and there is no material before the trial Court to summon the petitioners, as accused.

Learned counsel for the petitioners has vehemently argued that no case, as mentioned in the complaint, is made out against the petitioners and the complaint deserves to be quashed.

After hearing learned counsel for the petitioners, it is clear that the summoning order dated 2.6.2012 passed by Judicial Magistrate Ist Class, Faridkot is based on preliminary evidence. The complainant himself has stepped into the witness box as

CW1 followed by other witnesses i.e. CW2 Hoshiar Singh, CW3 Dr. Shilekh Mittal, CW4 Jaswant Singh. The complainant closed his evidence after proving the copy of the FIR No.35 dated 22.3.2009 registered at Police Station Sadar Faridkot as Ex.CX, copy of rapat roznamcha as Ex.CY, copy of MLR as Ex.CW3/A, copy of pictorial diagram as Ex.CW3/B and copy of supplementary report of the doctor as Ex.CW3/C.

Having regard to the preliminary evidence, as adduced by the complainant, the trial Court has come to the conclusion that though the injuries, as caused to the complainant, as per his own version, are not of such nature which may be declared as dangerous to life. In the MLR also, it is nowhere mentioned that any of the injuries caused to the complainant is dangerous to life and therefore, Section 307 IPC was not attracted. Thus, on the basis of the available evidence, the trial Court has summoned the petitioners, as accused only under Sections 452/326/324/323/295-A/353/34 IPC.

At this stage, it will be relevant to refer to Section 397 CrPC, which reads thus:-

397. Calling for records to exercise powers of revision.—

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed,

and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.”

A perusal of the aforesaid provision would clearly show that the petitioner has the remedy of revision before the Sessions Judge, who may call for and examine the record of any proceedings before any inferior criminal Court situated within his local jurisdiction.

Admittedly, the impugned order of summoning has been passed by Judicial Magistrate Ist Class, Faridkot, which is an inferior criminal Court to the Sessions Judge, thus, the petitioners have not exhausted their remedy of revision available before the Sessions Judge, as provided under the law.

In this view of the matter, I find no merit in the present petition and the same is hereby dismissed.

May 28, 2015
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(HARI PAL VERMA)
JUDGE