

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-28694 of 2015
Date of Decision : 27.8.2015

Chander Parkash

.....Petitioner

Vs.

Ashok

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. J.S. Yadav, Advocate for the petitioner.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned judgement dated 4.6.2015 (Annexure P-4) passed by the learned Additional Sessions Judge, Rewari, dismissing the revision of the petitioner, whereby impugned order dated 19.7.2014 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Kosli ('JMIC' for short), dismissing the complaint of the petitioner was upheld, he has approached this court by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), for setting aside the impugned orders.

Brief facts of the case, as noticed by the learned revisional court in para 3 of its judgement are that accused Ashok having received telephonic call from complainant reached at the plot of Umed Singh and complainant found

that Ashok was having a kulhara in his hand and on seeing complainant accused started foul language against complainant and attacked him with kulhara. He gave kulhara blow from sharp end on his left shoulder and right side of his chest, lower side of left leg. Complainant was rescued by Umed, Krishan, Manoj and Ramesh from the clutches of accused. Before leaving accused threatened him that today he was saved but on next time he would kill him. As per complainant the grievances of accused is that he wants to illegally encroach his plot. It is also the case of complainant that he got his medical examination from GH Rewari but the medical officer prepared wrong and illegal MLR in collusion with accused. Whereas on the false MLR of accused, police registered a false FIR against him and mere recording DDR No.22 on the statement of complainant, police did not take any further action against accused, and hence, complaint was filed.

With a view to prove his allegations, complainant himself appeared as PW-1 and examined six other PWs, besides producing on record other documentary evidence.

After hearing the learned counsel for the complainant and going through the evidence brought on the record, the learned trial Magistrate came to the conclusion that the complainant-petitioner failed to make out even a prima facie case, enabling the learned trial court to proceed against the accused. Accordingly, complaint was dismissed, vide impugned order dated 19.7.2014 (Annexure P-2). Dissatisfied, petitioner filed his criminal revision petition, vide Annexure P-3, which also came to be dismissed by the learned Additional Sessions Judge, vide impugned judgment dated 4.6.2015 (Annexure P-4). Hence this petition under Section 482 Cr.P.C., at the hands of the complainant.

Learned counsel for the petitioner-complainant submits that there was cogent and reliable evidence brought on record by the petitioner, which was sufficient for summoning the accused-respondents. Since the learned courts below have failed to appreciate the true facts of the case as well as the evidence available on the record, in the correct perspective, the impugned judgements have resulted in serious miscarriage of justice and the same are liable to be set aside. He concluded by submitting that the approach adopted by both the learned courts below were patently illegal. He prays for setting aside the impugned orders, by allowing the present petition.

Having heard learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that in the peculiar facts and circumstances of the case, noticed herein above, instant one has not been found to be a fit case, warranting interference at the hands of this court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

A combined reading of both the impugned orders passed by the learned courts below would show that the learned trial court as well as the revisional court examined, considered and appreciated all the relevant aspects of the matter before recording their cogent findings in support of their respective judicious conclusions. The factual aspect of the matter as well as the evidence brought on the record were appreciated in the correct perspective. None of the courts has been found to have committed any factual or legal error, while passing their respective impugned orders and the same deserve to be upheld.

It was a matter of record that allegations levelled by the petitioner

have been tested thrice and every time were found to be without any substance. Firstly, his complaint was enquired into by the police authorities and the allegations levelled were found to be bereft of any merit. Secondly, the learned trial court allowed the petitioner to bring on record the preliminary evidence, which he did, but failed to make out even a prima facie case against the respondents. The learned trial court was well justified to dismiss the complaint of the petitioner, vide impugned order dated 19.7.2014 (Annexure P-2).

Thirdly, the learned Additional Sessions Judge also dismissed the revision petition of the petitioner, because the impugned order passed by the learned trial court was not found suffering from any patent illegality. Petitioner was granted sufficient opportunity to make out a prima facie case to enable the learned trial Magistrate to proceed against the accused, but he miserably failed. Having said that, this court feels no hesitation to conclude that the petitioner was bent upon to cause maximum harassment to the respondent with a view to wreck his vengeance, by resorting to glaring misuse of the process of court. Thus, impugned orders deserve to be upheld, for this reason also.

The above said view taken by this court also finds support from the observations made by the Hon'ble Supreme Court in the case of **Punjab National Bank and others Vs. Surendra Prasad Sinha**, 1993 Supl. (1) SCC 499. The relevant observations made by the Hon'ble Supreme Court in para 6 of the judgement, read as under :-

“ It is also salutary to note that judicial process should not be an instrument operation or needless harassment. Their lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law

casts liability or creates offence against the juristic person or the persons impleaded them only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreck personal vengeance.”

Coming to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Surendera Prasad Sinha's case (supra)**, it is unhesitatingly held that since the petitioner was found misusing the process of law, the learned courts below rightly dismissed his complaint vide impugned orders, which deserve to be upheld.

Further, during the course of hearing, learned counsel for the petitioner could not point out any patent illegality or jurisdictional error in any of the impugned orders, so as to convince this court to take a different view than the one taken by the learned courts below. It is pertinent to note here that although the jurisdiction of this court under Section 482 Cr.P.C., is wide enough, yet it is equally true that the inherent jurisdiction is to be exercised sparingly and with circumspection. Present one has not been found to be a case, which may warrant the exercise of its inherent jurisdiction under Section 482 Cr.P.C., by this court.

No other argument was raised.

Considering the peculiar facts and circumstances of the case, noticed herein above, coupled with the reasons aforementioned, this court is of the considered view that instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, instant petition stands dismissed, however, with no order as to costs.

27.8.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE