

CRM-M-85 of 2010 1

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

**CRM-M-85 of 2010
Date of decision : 21.05.2015**

Madhu Bala and others

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Anju Arora, Advocate
for the petitioners.

Mr. Anmol Malik, AAG, Haryana

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

DARSHAN SINGH,J

1. The present petition has been filed under Section 482 Cr.P.C for quashing the impugned order dated 15.12.2004 framing the charge against the petitioners. It has been further prayed that the proceedings before the trial Court in case FIR No. 145 dated 02.08.2004, Police Station City Dabwali, under Sections 323, 324, 506, 35 of Indian Penal Code pending in the Court of Judicial Magistrate Ist Class, Dabwali, District Sirsa be stayed during the pendency of the petitioner and during the pendency of CRM-M-46768

of 2006.

2. The brief facts giving rise to this proceedings are that Prem Kumar- complainant got registered above mentioned case on the allegations that on 31.07.2004 he was sitting in front of his shop on the mettled road. His father-in-law was also sitting in the shop. The petitioners came there. They started abusing him. He told them that they had already taken the share in the house and now they were not entitled for any more share. At this, petitioner no.2 Kala @ Monu who was having the sharp edged weapon gave a blow on the backside of the head of the complainant. The remaining petitioners caught hold of him. He raised the noise, which attracted his brother Raj Kumar, who came at the spot and rescued him. While leaving the spot, they threatened that today he has been saved, if he lodged any complaint against them to the police, they will kill him. On these allegations, the present case has been got registered.

3. After completion of the investigation, the report under Section 173 Cr.P.C was presented in the Court. Learned Sub-divisional Judicial Magistrate, Dabwali framed the charges against the petitioners under Sections 324, 324, 34 and 506 of IPC against the petitioners.

4. Aggrieved with the framing of the charges against the petitioners, they have preferred the present petition.

5. Initiating the arguments, Ms. Anju Arora, Advocate learned counsel for the petitioners contended that the petitioners have been falsely implicated. In-fact the complainant and his companions have caused injuries to petitioner Madhu Bala and Kala @ Monu and they were medico legally examined on the same day and had filed the criminal complaint. These circumstances were not taken into consideration while framing the charges by the learned Judicial Magistrate. She further contended that the present case should have been simultaneously tried jointly with the complaint case filed by petitioner Madhu Bala. But, even that procedure has not been followed.

6. On the other hand, learned State counsel contended that the present petition under Section 482 Cr.P.C is not maintainable. The petitioners had a remedy of revision before the learned Sessions Court and they have not availed that remedy. He further contended that a *prima-facie* case was made out from the statement of the witnesses, the medical evidence and other record. So, there is no legal infirmity in framing of the charges.

7. I have duly considered the aforesaid contentions.

8. Firstly, I take up the preliminary issue with respect to the maintainability of the present petition. It is nowhere mentioned in the present petition that against the

impugned order dated 15.12.2004 framing the charges against the petitioners, they have availed any remedy of revision available to them under Section 397 Cr.P.C before the Court of Sessions. They have directly filed the present petition under Section 482 Cr.P.C before this Court. The law is well settled that where a specific and alternative remedy under Section 397 Cr.P.C is available, the petitioner under Section 482 Cr.P.C can not be entertained. The Hon'ble Supreme Court in case **Mohit @ Sonu and another Vs. State of U.P and another, 2013(3) R.C.R (Criminal) 673** has laid down as under:-

“22. In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of Criminal Procedure Code and not by invoking inherent jurisdiction of the High Court under Section 482 of Criminal Procedure Code. Maybe, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 of Criminal Procedure Code. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of Criminal Procedure Code, the High Court before passing the order would have given notice and opportunity of hearing to the appellants.

23. So far as the inherent power of the High Court as contained in Section 482 of Criminal

Procedure Code is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revision jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.”

9. Concluding the aforesaid issue, it was further laid down:-

“27. The intention of the Legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis-a-vis the law laid down by this Court it can safely be concluded that when there is a specific remedy provided by way of appeal or revision the inherent power under Section 482 Criminal Procedure Code or Section 151 C.P.C cannot and should not be resorted to.”

10. In view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court, when the alternative remedy of revision was available to the petitioners, then the inherent powers under Section 482

Cr.P.C can not be exercised. These powers can be exercised only when there is no other remedy provided in the Code of Criminal Procedure for redressal of the grievances. In the instant case, it is not disputed that the remedy of revision under Section 397 Cr.P.C was available to the petitioners to assail the impugned order of framing the charges before the Sessions Court. But, without availing that remedy straightway the present petition has been filed, which is not maintainable.

11. Moreover, the impugned order has passed on 15.12.2004 and the present petition has been filed in January 2010 i.e. after more than five years. Thus, the delay and laches on the part of the petitioners in filing the present petition also dis-entitles them for any relief.

12. There is no question of the joint trial of the present case with the complaint filed by the petitioner Madhu Bala, as admittedly, the said criminal complaint was dismissed without passing any summoning order.

13. Thus, keeping in view of my aforesaid discussion, the present petition is without any merits and the same is hereby dismissed.

21.05.2015

s.khan

**(DARSHAN SINGH)
JUDGE**