

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

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Crl. Misc. No. M 41753 of 2013

Date of decision: 20.02.2015

Bablu and another

..... Petitioners

Versus

Sunita

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Surender Deswal, Advocate
for the petitioners

Mr. Vikrant Hooda, Advocate
for the respondent

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

Rekha Mittal, J.

The instant petition under Section 482 of the Code of Criminal Procedure lays challenge to order dated 23.02.2013 (Annexure P5) whereby the revision petition preferred by the respondent against order dated 24.08.2011 (Annexure P3) passed in favour of the petitioners has been allowed and the petitioners have been summoned to face trial for commission of offence punishable under Sections 323, 324 and 506 of the Indian Penal Code (in short, 'IPC') read with Section 34 thereof.

Counsel for the petitioners contends that the respondent filed a

private complaint against the petitioners and their parents, namely Ranbir son of Nafe Singh and Saroj wife of Ranbir for commission of offence punishable under sections 323, 324, 506 read with Section 34 IPC. After conducting preliminary inquiry, the learned trial Magistrate vide order dated 24.08.2011 (Annexure P3) summoned Ranbir and Saroj arrayed as accused No. 1 and 4 for committing offence punishable under sections 323, 506 read with Section 34 IPC and the Court refused to summon the present petitioners with the findings that there is no material to proceed against accused No. 2 and 3. It is further submitted that as per case of the complainant, the petitioners were not present at the spot when the complainant party allegedly sustained injuries at the behest of accused Ranbir and Saroj. It is argued that satisfaction recorded by the trial Magistrate on the basis of materials on record holding in favour of the petitioners cannot be lightly interfered by the revisional Court, therefore, the impugned order is liable to be set aside.

Counsel for the respondent, on the contrary, would urge that the complainant has levelled specific allegations against the petitioners that on 13.09.2009 at about 6.00 pm, Rekha and Sweety went to gitwar to drop dung. Accused Ranbir had fenced half of the gitwar. After dropping dung, her sister's daughters started to remove the fence and pick up dung of accused Ranbir. Accused Ranbir started abusing Rekha and Sweety. Bablu caught hair of Rekha whereas Sanjay caught Sweety by her hair. Ranbir hit both the girls with 'jelly'. The girls returned home and narrated the incident. Thereafter the complainant and her brother- in-law Shri Bhagwan went to house of Ranbir to complain and Ranbir and his wife Sunita caused injuries

to Shri Bhagwan and the complainant. It is further argued that keeping in view allegations raised against the petitioners, no fault can be found in the order passed by the revisional Court.

I have heard counsel for the parties and perused the records.

The scope of inquiry under Section 202 Cr.P.C. has been dealt with in detail in the judgment of Hon'ble the Apex Court ***Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others, 1976 AIR (SC) 1947*** wherein the Court has referred to its earlier decisions in ***Chandra Deo Singh v. P:roakash Chandra Bose, (1964) 1 SCR 639*** and ***Vadilal Panchel v. Dattatraya Dulaji, (1961) 1 SCR 1***. Indisputably, there is no medico legal report of Sweety and Rekha in regard to whom role has been attributed to the petitioners with the allegations that Bablu caught hair of Rekha and Sanjay caught Sweety by her hair. The complainant was not present at the spot when Rekha and Sweety had gone to drop dung in the gitwar at about 6.00 p.m. on 13.09.2009. The petitioners were not present in the house of Ranbir when the complainant and Shri Bhagwan had gone to his house to complain against the earlier incident. This apart, the learned trial Magistrate, on appreciation of evidence adduced during preliminary inquiry came to hold that there is no prima facie case to proceed against the present accused. The revisional Court set aside the order passed in favour of the petitioners without providing them an opportunity of being heard in compliance with the judgment of Hon'ble the Supreme Court of India ***Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others, 2012 (4) RCR (Criminal) 689***.

In view of the above, I am of the considered opinion that the

impugned order passed by the revisional Court cannot be allowed to sustain and accordingly set aside.

For the reasons aforesaid, the petition is allowed and the impugned order dated 23.02.2013 (Annexure P5) passed by the Additional Sessions Judge, Jhajjar is set aside. No order as to costs.

(Rekha Mittal)
Judge

20.02.2015
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