

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

CRM-M-4176-2013 (O&M)

Date of decision : 15.01.2015

Balbir Kaur and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Jasdeep Singh Gill, Advocate for the petitioner.

Ms. Trishanjali Shrama, AAG, Haryana.

Mr. Aman Sharma, Advocate for respondent No.2.

JITENDRA CHAUHAN, J.

The present petition under Section 482 of the Code of Criminal Procedure, (for short, 'the Cr.P.C.') has been filed seeking quashing of the criminal complaint bearing No.235-1 dated 13.06.2008/01.07.2008, under Sections 323, 506, 379, 149 of the Indian Penal Code and Sections 3 & 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, titled as Sultan Vs. Hardayal', pending in the Court of Judicial Magistrate 1st Class, Sirsa; summoning order dated 16.04.2009 (Annexure P-5) and the order dated 17.12.2011, passed by the learned Sessions Judge, Sirsa,

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dismissing the revision petition of the petitioner (Annexure P-6).

It is contended that the instant complaint is the result of party faction in the village. Petitioner No.1 is the Sarpanch of Village, whereas, petitioner No.2 is her son. The complainant-respondent was in illegal occupation of Harijan Chopal of the Gram Panchayat. Thereafter, vide resolution dated 26.03.2007, it was resolved to get the premises vacated from the complainant after issuing due notice upon him under the Haryana Panchayati Raj Act. When the complainant refused to abide by the resolution, the matter was brought to the notice of the higher authorities. Vide order dated 03.07.2007, the Deputy Commissioner issued instructions to the Superintendent of Police, Sirsa, for providing police help to maintain peace whenever the Gram Panchayat gets the land vacated from the complainant. On 18.02.2008, petitioner No.1, along with BDPO, Ellenabad, members of the Panchayat and some police officials went to the spot, the complainant and his wife took away their domestic goods and vacated the chopal and the possession thereof was handed over to the Panchayat. No incident as alleged, took place. He further refers to Annexure P-3, a communication sent by the Deputy Superintendent of Police, Ellenabad, to the Inspector General of Police, Hissar, stating therein that the complaint was politically motivated and the allegations therein were absolutely false and baseless. The learned counsel contends that

in the proceedings, this Court will not conduct an enquiry as to whether any such incident happened or not because it requires evidence to be led. Thus, the impugned orders, Annexures, P-4, P-5 and P-6, are liable to be set aside.

Heard.

As per the allegations raised in the complaint, on 18.02.2008 at about 5.00 – 6.00 PM, the petitioners along with Hardayal Singh, Rameshwar and Puran Chand, entered into the chopal, when his wife was alone there. She was given beatings by petitioners and other persons and their household articles were thrown out. The petitioners also opened a trunk lying in the room and took away Rs.1,10,000/-, lying therein. The petitioners along with the co-accused also used derogatory words in the name of the caste of the complainant in the presence of the eyewitnesses. The complainant approached the police authorities but no action was taken. Thereafter, the present complaint was filed by the complainant. In preliminary evidence, he examined himself as PW-1, Lichhma Devi, his wife as PW-2, Vidya as PW-3, Shanker Singh as PW-4, Pargat Singh as PW-5, Hartej Singh as PW-6, Gurdeep Singh as PW-7 and also placed on record several documents. The learned summoning Court, after appreciating the oral as well as the documentary evidence brought on record, recorded that a prima facie case under Sections 323, 506, 379 read with Section 149

IPC and Sections 3 & 4 of the SC&ST Act, is made out against the accused persons. Feeling aggrieved, the accused preferred a revision petition before the learned Additional Sessions Judge, Sirsa, which has also been dismissed vide order Annexure P-6. It is to be noticed that the parties are engaged in several civil and criminal litigations against each other. The assertions raised by both the parties can be proved only by leading evidence during the course of the trial.

In *Swaran Singh and others Vs. State – 2008(4) R.C.R. (Criminal) 74*, it has been held that at this stage, the Court is not to see whether allegations were correct or not, Court has only to see whether treating the allegations as correct, an offence is made out or not. In the case in hand, treating the allegations to be true, a prima facie case for committing the offence under Sections 323, 506, 379 IPC read with Section 149 IPC and Sections 3 and 4 of the SC/ST Act against all the accused is made out, as observed by the JMIC, Sirsa.

The complainant was put into the possession by resolution of the Gram Panchayat, to look after and maintain the building as the same was lying neglected. There is no resolution of the Gram Panchayat on record vide which the petitioners were authorized by the Panchayat to get the building vacated or any evidence that the complainant was served. The Court of competent jurisdiction has taken a view that prima facie case against the petitioners is made out.

In view of the above discussion, this Court does not find any merit in the present petition and the same is consequently dismissed.

15.01.2015
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(JITENDRA CHAUHAN)
JUDGE