

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-42692 of 2013

Date of decision : May 11, 2015

Kishan Singh and others

..... Petitioners

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Arvinder Singh Khosa, Advocate for the petitioners

Mr. K.S. Aulakh, AAG Punjab

Mr. Damanjeet, Advocate for respondent No. 2

ANITA CHAUDHRY, J.

This petition has been filed under Section 482 Cr.P.C. for quashing FIR No. 155 dated 18.07.2012 registered under Sections 457, 380, 447, 511 IPC at Police Station Abohar, District Fazilka.

It would be useful to first briefly refer to the facts.

Pritam Singh – complainant disclosed in his complaint that when he came to his shop in the morning he found the lock of his shop broken and lot of the articles lying had been stolen. The complainant asked the neighbours and came to know that Surjit Singh, Krishan Singh, Sukhdev, Manjit Singh, Prince and Jaswinder Singh had come with the intention of taking possession of the shop and had taken away the articles. The complainant called a Panchayat. The persons named by him were also summoned. The matter was not resolved and thereafter a complaint was lodged. The

complainant had stated that articles worth Rs. 3 lacs had been taken away. The police after an investigation filed challan only against Krishan, Sukhdev, Manjit and Prince.

The trial Magistrate vide its order dated 23.04.2013 framed charge under Section 447 read with Section 511 IPC.

Aggrieved with the order, the complainant filed a revision and the Additional Sessions Judge, Fazilka vide order dated 01.08.2013 set aside the order framing charge and observed that there was an error in dropping Section 457/380 IPC and directed the trial Court to reframe the charge. The concluding paragraph reads as under:-

“Perusal of the impugned order dated 23.4.2013 shows that the petitioner is aggrieved by charge U/s 447 read with Section 511 IPC and according to the revisionist on perusal of the FIR charges should have been framed U/s 457/380 of IPC as seeing the gravity of the offence and perusal of the FIR shows that it was specifically mentioned by Pritam Singh applicant that at about 7.30 a.m. when he visited his shop, he found the locks of his shop to be broken and several articles were taken away from the said shop and they have been inquired about the same and they came to know that Suijit Singh son of Gurbax Singh, Krishan Singh son of Gurbax Sigh, Sukhdev Singh, Manjit Singh both sons of Avtar Singh, Prince son of Sukhdev Sigh and Jaswinder Singh son of Surjit Singh in order to take possession of his shop had intentionally taken away the articles from his shop. From the ingredients of the FIR it reveals that after breaking the locks of the shop the theft has been committed by the accused persons. The Ld. Trial Court has committed error in framing the charge by dropping the Sections

457/380 of IPC. Accordingly, the impugned order is set aside and the Ld. Trial Court is directed to re-frame the charge. Hence the present revision petition is accepted.”

Notice of motion was issued and reply has been filed by the respondents. It has been pleaded that though six persons were named by the complainant but during investigation accused Surjit Singh and Jaswinder Singh were found innocent and the trial Court found that no charge could be framed under Section 380/457 IPC and charge was only framed under Section 447/511 IPC and trial is proceeding and two witnesses had been examined till November 2014.

I have heard learned counsel for the parties.

Learned counsel for the petitioners have urged that the revision was filed by the complainant without impleading the accused and the Additional Sessions Judge without summoning the accused had passed an order behind their back. He urges that a civil dispute was pending and FIR could not have been registered and it is a fit case where the FIR should be quashed and it is only after the decision by the civil Court, the Court can take a decision whether there was any theft.

Learned counsel for the complainant states that the trial is proceeding and 8 witnesses have been examined and the State was a party and presence of the accused was not necessary.

So far as the quashing of the FIR is concerned there are allegations and counter allegations which can not be decided in a

petition under Section 482 Cr.P.C. and will be tested during trial. An FIR can be quashed only when the Court finds that it is necessary in the interest of justice or to avoid the abuse of the process of the Court. The FIR can be quashed only in exceptional and on rare occasions which is not the case here. The factual position will have to be examined by the trial Court after the parties have been given an opportunity to lead evidence. So far as the order dated 01.08.2013 is concerned it will have to be set aside as the orders have been passed at the back of the accused. The revision was filed by the complainant without impleading the accused. The order could not have been passed without giving a hearing to the accused. Further no directions could have been given by the revisional Court to frame a particular charge under a particular Section. If the Court found that there were infirmities it could only direct the trial Magistrate to hear the party and then pass an appropriate order.

In view of the above, order dated 01.08.2013 passed by the Additional Sessions Judge, Fazilka is set aside. The complainant would appear before the Additional Sessions Judge concerned on 01.06.2015. He would file an application for impleading the accused as a party. The Additional Sessions Judge would then proceed to implead the accused as a respondent and after notice to the respondent, it would hear the parties and then pass an order after hearing both the sides.

The petition is partly allowed.

May 11, 2015

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**(ANITA CHAUDHRY)
JUDGE**