

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

CRM-M-41342 of 2014 (O&M)

Date of Decision: 2.11.2015

Diwana

.....Petitioner.

Versus

Jaipal and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. M.K. Garg, Advocate
for the petitioner.

- 1. To be referred to the Reporters or not? Yes**
- 2. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J.

Feeling aggrieved against the impugned order dated 1.10.2014 (Annexure P-2) passed by the learned Sessions Judge, Jind, dismissing the revision of the petitioner-complainant against the order dated 6.9.2013 passed by the learned Judicial Magistrate 1st Class, whereby the complaint of the petitioner was dismissed and accused-respondents were discharged, petitioner 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.

Briefly put, relevant facts recorded by the learned trial court in para 1 to 3 of its impugned order, are that complainant was a retired railway employee and was residing with his family in Saini Mohalla, Jind, whereas the accused were anti-social elements and were habitual of creating nuisance in the mohalla after taking drink. It was alleged that about ten months ago, the accused were abusing the passer-by in the mohalla after taking drinks and when the complainant asked them that they should live nicely and should not disturb the peace of others, then the accused became furious and threatened the complainant with dire consequences. It was averred that on 30.9.2009 at about 9:00 P.M., when the complainant was coming to his house after purchasing medicines, he was forcibly restrained in the street by all the accused persons, who caught hold the complainant with an intention to cause hurt to him but he was rescued by the neighbourers. It was submitted that again on 19.10.2009 at about 9:00 P.M., all the accused persons forcibly entered in the house of complainant armed with lathis under the influence of liquor and in furtherance of their common intention, they voluntarily caused injuries to the complainant and his son Bir Bhan with their respective weapons and also caused damage of ₹5,000/- and broke the television of the complainant. Sadhu son of Harphul rescued them. While leaving, the accused threatened to kill him if he reported the matter to the police. The complainant reported the matter to the police but no action was taken. He prayed that action be taken against the accused.

The complainant in support of his case, in preliminary

evidence, examined complainant Diwana as CW1 and Bir Bhan as CW2. Thereafter, preliminary evidence was closed and accused were summoned under Sections 323/452/506 read with Section 34 IPC. In pre-charge evidence, complainant Diwana stepped into witness box as CW1 and Bir Bhan as CW2. Thereafter, pre-charge evidence was closed by learned counsel for the complainant.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that complainant failed to make out even a prima facie case against the respondents for framing charge. Material contradictions were found existing in the testimony of the complainant himself, who appeared as CW1. Neither any MLR was placed on record, nor any other cogent piece of evidence was available on record to corroborate the oral testimony. Accordingly, learned Magistrate dismissed the complaint, discharging the accused persons vide impugned order dated 6.9.2013 (Annexure P-1). Dissatisfied, petitioner filed his revision petition which also came to be dismissed by the learned Sessions Judge, vide impugned judgment dated 1.10.2014. Hence this quashing petition under Section 482 Cr.P.C.

Learned counsel for the petitioner submits that learned courts below have failed to appreciate cogent evidence which was sufficient to frame charge against the respondent-accused. He further submits that since both the learned courts have failed to appreciate true facts of the case as well as cogent evidence brought on record in the correct perspective, the impugned orders have

resulted in miscarriage of justice. He prays for allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation, 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. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of the impugned orders would show that each and every relevant aspect of the matter has been examined, considered and appreciated by the learned courts, before arriving at their respective judicious conclusions. The pre-charge evidence brought on record by the petitioner-complainant was considered and appreciated in the correct perspective, but the same was not found sufficient even to make out a prima facie case against the respondents, for framing charge against them. More than one serious contradictions were found in the testimony of the petitioner-complainant.

Further, neither any MLR was placed on record, nor any other cogent evidence was produced, so as to corroborate the oral testimony. The allegations levelled by the petitioner remain only the allegations as he failed to substantiate the same in the absence of any cogent evidence available with the complainant. Having said that, this Court feels no hesitation to conclude that learned courts

below committed no error of law, while passing their respective impugned orders and the same deserve to be upheld, for this reason also.

In this regard, the law has been settled by the Hon'ble Supreme Court in the case of State Tr. Insp. of Police Vs. A. Arun Kumar and another, 2015 (2) SCC 417, wherein the Hon'ble Supreme Court reiterated its earlier view taken in the case of Sajjan Kumar Vs. Central Bureau of Investigation, 2010 (9) SCC 368.

The relevant observations made in para 8 of the judgment in A.Arun Kumar's case (supra), which can be gainfully followed in the present case, read as under:-

*“The law on the point is succinctly stated by this Court in **Sajjan Kumar v. CBI, 2005 (3) RCR (criminal) 707** wherein after referring to **Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4** and **Dilawar Balu Kurane v. State of Maharashtra, 2002 (1) RCR (criminal) 451** this Court observed in para 19 thus:*

“It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding

prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

This Court went on to cull out principles as regards scope of Sections 227 and 228 of the Code, which in our view broadly apply to Sections 238 and 239 of the Code as well. It was observed thus in para 21:

“Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

21. *On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:*

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court

disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the 9 Page 10 broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents

on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

Reverting back to the facts and circumstances of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, it is unhesitatingly held that learned courts have not been found to have exceeded their jurisdiction, while passing their respective impugned orders.

During the course of hearing, learned counsel for the petitioner failed to point out any jurisdictional error or patent illegality apparent on record in either of the impugned orders, passed by the courts below, so as to convince this Court to take a different view than the one taken by the learned trial court as well as learned

revisional court. In this view of the matter, petitioner has not been found entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. and the impugned orders deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is 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, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

2.11.2015.
Ak Sharma