

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

CRM No.M-4447 of 2015

Date of Decision: February 11, 2015

Sanjay Kumar

...Petitioner

VERSUS

Dr.G.P.Burman and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Ram Niwas Kush, Advocate  
for the petitioner.

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**INDERJIT SINGH, J.**

Petitioner Sanjay Kumar has filed this petition under Section 482 Cr.P.C. for quashing of order dated 03.11.2014 passed by learned Addl. Sessions Judge, Hisar in criminal revision against the summoning order in case FIR No.135 dated 01.03.2001 under Sections 304/34 IPC, wherein the police had filed the cancellation report but the reply by the complainant was treated as complaint by learned JMJC, Hisar, which resulted into summoning order dated 26.07.2013 and further for quashing of further proceedings based on said order.

I have heard learned counsel for the petitioner and have gone through the record.

As per the order dated 26.07.2013 passed by learned Judicial Magistrate 1st Class, Hisar, the police filed cancellation report in aforesaid FIR and the complainant filed the reply to the same. In

the reply, it is stated that no doubt that on the basis of the medical evidence regarding the cause of death, the police has prepared the cancellation report but in the said report the police has nowhere mentioned that the motive for the occurrence is false or that the deceased was not called by the accused at their clinic or that the deceased was not given beatings by the accused or that the deceased did not die in the occurrence of the beatings by all the accused while confining him in the clinic of the accused or that the statements made by the eye witnesses are false.

The brief facts of the case are that father of complainant Sanjay Kumar was a contractor and he had got constructed the clinic of Dr.G.P.Burman and his wife Dr.Renu Burman but they did not clear the amount of his father amounting to ₹50,000/-. On 28.02.2007, complainant along with his father and one Gulab Singh went to the clinic as Dr.G.P.Burman called his father to settle the account. At that time, Dr.G.P.Burman his wife Dr.Renu Burman, Vijay Sharma and 4-5 other persons were present there and they asked his father to sign on the blank papers and when the father of complainant refused to do so, they gave beatings to him. Thereafter, father of the complainant was taken to hospital, where doctors declared him brought dead. Police after completion of the enquiry filed the cancellation report on 07.06.2007, which was accepted by learned Chief Judicial Magistrate, Hisar on 22.09.2009 with the liberty to the complainant to file fresh complaint, if permitted by the law. The complainant filed revision petition before learned Addl. Sessions Judge, Hisar and that was

allowed as the complainant was not served while passing of the order on cancellation report. Again, the cancellation report was filed. In that case, the complainant filed present complaint in the form of reply to the cancellation report. Preliminary evidence was produced by the complainant and learned JMJC, Hisar summoned all the accused under Sections 304 and 34 IPC. Thereafter, revision was filed by accused-petitioners Dr.G.P.Burman and Dr.Renu Burman. Learned Addl. Sessions Judge, Hisar after giving notice to the respondent and hearing the parties and after discussing the law held that summoning order has been passed in a mechanical manner and it shows that the lower Court did not consider the law applicable on the facts of the case and the Court has not discussed as to whether the ingredients under Section 304 IPC are made out from the evidence and the impugned order was set aside and trial Court was directed to pass fresh order. Learned Addl. Sessions Judge, Hisar also discussed statement of Dr.Nisha Marwah, who has stated that if beating and threat is given to a heart patient, then it can lead to stress and acceleration of death of a heart patient. The Court further held that the Magistrate should have applied mind to know whether it is a case under Section 304 IPC and satisfies the requirement of Section 299 IPC. Learned Addl. Sessions Judge, Hisar also held that the accused must be knowing that the deceased was having bodily infirmity or disease or was laboring under a disorder and caused bodily injury thereby causing death.

The perusal of the record nowhere shows that the

judgment passed by learned Addl. Sessions Judge, Hisar is illegal nor the judgment, in any way, amounts to miscarriage of justice.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***Ajay Kumar Parmar vs. State of Rajasthan, 2012(4) RCR (Criminal) 617***. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case as in that case it was held that when an offence is cognizable by the Sessions Court, the Magistrate cannot probe into the matter and discharge the accused. He was bound under law to commit the case to the Sessions Court, where such application for discharge would be considered. These are not the facts of the case in hand.

Learned counsel for the petitioner further cited judgment passed by this Court in ***State of Punjab vs. Navjot Singh Sidhu and another, 2007(1) RCR (Criminal) 374***. I have also gone through this above-cited judgment and same also having distinguished facts will not apply in the present case.

Otherwise also, learned Addl. Sessions Judge, Hisar has only asked the Magistrate to re-consider the matter in view of the observations. So, no prejudice is going to be caused to the petitioner and he can argue before the Magistrate.

Therefore, finding no merit in the present petition, the same is dismissed.

**February 11, 2015**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**