

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRM No.M-9157 of 2014 (O&M)

Shankar Lal

...Petitioner

Versus

State of Haryana and another

...Respondents

(2) CRM No.M-9213 of 2014 (O&M)

Dinesh Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

(3) CRM No.M-15422 of 2014 (O&M)

Ashish Jain

...Petitioner

Versus

ASI Shankar Lal and others

...Respondents

Date of Decision: January 05, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Surinder Gandhi, Advocate
for the petitioners (in CRM No.M-9157 of 2014) and
(CRM No.M-9213 of 2014) and
for respondents No.1 and 2 (in CRM No.M-15422 of 2014).

Mr.Deepak Grewal, Deputy Advocate General, Haryana
for the respondent-State.

Mr.Arvind Rajotia, Advocate
for the petitioner in (CRM No.M-15422 of 2014) and
for respondent No.2 (in CRM No.M-9157 of 2014) and
(CRM No.M-9213 of 2014).

Mr.Ashish Kumar, Advocate
for respondents No.3 to 8 (in CRM No.M-15422 of 2014).

INDERJIT SINGH, J.

All these petitions are taken up together being arisen from

same complaint and based on similar facts.

Petitioners Shankar Lal and Dinesh Kumar have filed CRM Nos. M-9157 and M-9213 of 2014 under Section 482 Cr.P.C. for quashing of criminal complaint No.30 dated 17.07.2013/04.07.2013, summoning order dated 21.08.2013 passed by learned Judicial Magistrate Ist Class, Rohtak and judgment dated 01.02.2014 passed by learned Addl. Sessions Judge, Rohtak.

Petitioner Ashish Jain has filed CRM No.M-15422 of 2014 quashing of summoning order dated 21.08.2013 passed in criminal complaint No.30 dated 17.07.2013/04.07.2013 by learned Judicial Magistrate Ist Class, Rohtak and judgment dated 01.02.2014 passed by learned Addl. Sessions Judge, Rohtak being illegal, erroneous and arbitrary as the respondents were not summoned under Sections 167, 182, 363, 364, 499, 501 IPC along with other Sections of IPC.

Notice of motion was issued in this case and learned State counsel as well as learned counsel for respective respondents appeared and contested the petitions.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that Ashish Jain complainant filed the present complaint against ASI Shankar Lal, Constable Dinesh Kumar (present petitioners), Ajay Ahlawat, Vikas Sheokand, Vikram Singh, Sunil Kumar, Anil Taneja and Anil Luthra under Sections 167, 182, 323, 342, 363, 364, 499, 501 and 120-B IPC. The brief facts of the complaint are that complainant was dealing in computer business

at Jind and on 07.12.2011 ASI Shankar Lal along with Constable Dinesh Kumar, Ajay Ahlawat, Vikas Sheokand and Anil Luthra reached at Amarpur Dham near Rajgarh (Rajasthan) where the complainant was staying in a dharamshala to visit the holy places along with his wife and two minor children namely Harsh Jain and Lakshay Jain and the above-said accused mercilessly beaten the complainant, his wife and minor children and put them in a Bolero belonging to Ajay Ahlawat and started towards Rohtak. Constable Dinesh Kumar brought the car Indica along with Anil Luthra after threatening that they are driving the Indica as pilot vehicle of Bolero jeep.

All the accused reached at Dhaba at about 9.30 P.M. on 07.12.2011 and forced the complainant and his family to take the meal but they refused to take meal but ASI Shankar Lal stayed with complainant and his family and forced them to take stale meal. After that all the accused reached at Police Station Civil Lines, Rohtak and accused Vikram Singh, Sunil Kumar and Anil Taneja met there. After hatching conspiracy against the complainant, complainant and his family members were put behind the bars in separate barracks. At about 12.30-1.00 A.M., wife and minor children of the complainant started vomiting and police officials brought them to PGIMS, Rohtak and after this occurrence, the complainant was arrested by ASI Shankar Lal in a false FIR No.656 of 2011 under Section 406 IPC in connivance with the accused. The Indica car was deposited with MHC without any cause. It is further stated in the complaint that after acquittal of the complainant, he came to know regarding depositing of

Indica car.

Learned Judicial Magistrate Ist Class, Rohtak vide order dated 21.08.2013 summoned accused ASI Shankar Lal, Constable Dinesh Kumar, Ajay Ahlawat, Vikas Sheokand and Anil Luthra for commission of offence under Sections 323, 342 and 120-B IPC and summoned accused Vikram Singh, Sunil Kumar and Anil Taneja to face trial under Sections 342 and 120-B IPC only. Aggrieved from above summoning order, revision petitions were filed by the petitioners, which were dismissed by learned Addl. Sessions Judge, Rohtak, vide judgment dated 01.02.2014. Aggrieved from the above-said judgment, the present petitions under Section 482 Cr.P.C. have been filed.

From the record, I find that first of all regarding the delay in the present case in filing the complaint that is to be seen by the trial Court on the basis of evidence. The complainant stated that he remained in custody in another case, so he could not file the complaint earlier. Therefore, his explanation is to be seen or appreciated on merit only when the complainant will produce evidence in the complaint. Secondly, as regarding the sanction under Section 197 Cr.P.C. against petitioners Shankar Lal and Dinesh Kumar again it is to be seen by the Court by giving finding of fact whether the petitioners Shankar Lal and Dinesh Kumar have acted by confining the complainant, his wife and minor children in the police station, in discharge of their official duties or not. On the face of it, confining of wife of the complainant and minor children in the lock-up without any

case, shows that the above-said petitioners have not acted in discharge of their official duties, therefore, in no way, it can be held that sanction under Section 197 Cr.P.C. is must before filing the complaint. As already discussed, this fact is to be seen on the basis of evidence which is to be produced by the parties before the trial Court. The fact that the petitioners Shankar Lal and Dinesh Kumar exceeded to some extent while discharging in the official duties etc. or whether their case falls in general exception as given in the IPC, is also to be seen on merits when the parties will lead evidence. At this stage, in no way, it can be held that no offence is made out or filing of the present complaint is misuse or abuse of the process of the law. Therefore, the complaint is not liable to be quashed.

As regarding the summoning order, remedy has been provided under the Cr.P.C. and all the petitioners have availed the remedy by filing revision petitions before learned Addl. Sessions Judge. The said revision petitions of the petitioners have also been dismissed. Second revision is not maintainable as per Section 397 (3) Cr.P.C. The present petitions challenging the summoning order under Section 482 Cr.P.C. now amount to filing of second revision. In the petition under Section 482 Cr.P.C., the petitioner is to show that miscarriage of justice has taken place and the order on the face of it, is illegal or against the provisions of law or against the evidence produced on the record. Nothing has been pointed out as to how the order and judgment passed by the Courts below are illegal or against the provisions of law or against the evidence or has resulted into

miscarriage of justice. The order and judgment passed by the Courts below are correct and as per law.

As regarding the fact that whether accused should also be summoned under Sections 167, 182, 363 IPC etc., it is to be determined by learned Judicial Magistrate Ist Class on the basis of preliminary evidence as to under which Section accused should be summoned. If the Court at any stage feels that any other offence is made out on the basis of pre-charge evidence etc. or later on, the Court can frame or amend the charge at any stage.

In view of the above discussion, the impugned order and judgment passed by the Courts below are correct, as per law and do not require any interference from this Court and the same are upheld.

Therefore, finding no merits in the present petitions, the same are dismissed.

January 05, 2015
Vgulati

(INDERJIT SINGH)
JUDGE