

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

CRM-M-12018 of 2016.

Decided on:-07.04.2016.

Tek Ram.

.....Petitioner.

Versus

Anil Kumar Arya and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

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

Present:- Mr. Sunil K. Nehra, Advocate
for the petitioner.

HARI PAL VERMA, J.

Tek Ram son of Nihal Singh, resident of village Data, Tehsil Hansi, District Hisar has filed the present petition under Section 482 Cr.P.C. for quashing order dated 24.9.2015 (Annexure P-3) passed by learned Sub-Divisional Judicial Magistrate, Hansi whereby summoning of respondents No.2, 3, 6, 9 to 31, 33 to 46 and 48 for commission of offence under Sections 147, 148, 149, 323 and 325 IPC, has been declined. Challenge has also been made to order dated 16.3.2016 (Annexure P-5) passed by learned Additional Sessions Judge, Hisar whereby revision petition filed against order (Annexure P-3), was dismissed.

Briefly stated, case of the petitioner is that he is an active social

worker and takes part in social service and Gau Sewa. A Gaushala in the name of 'Gaushala Baba Shala Dairy' is running in village Data for the last many years. About 300 acres of land of said Gaushala has been left for growing cattle field and for grazing of shelterless and physically disabled cows. The Gaushala was run by a committee consisting of 11 members. However, the old committee had been removed and in the Gaushala, some anti-social elements started taking part in the management of Gaushala.

On 7.9.2010, a general meeting of the members of Gaushala was called in which the new executive was to be elected. The petitioner and other residents of the village were also invited for taking part in the meeting. When the petitioner reached the Gaushala to take part in the meeting, all the accused persons were present there outside the gate of Gaushala along with the police of Police Station Sadar Hansi. The accused were armed with weapons and when the petitioner along with other witnesses reached the gate of Gaushala, respondent No.1 Anil Kumar Arya raised a Lalkara to the other accused persons saying that the petitioner and witnesses be killed. They should not be permitted to enter in the Gaushala. Then, respondent No.1 and other accused persons started attributing injuries to the petitioner and other witnesses with their respective weapons.

The petitioner has further alleged that, he reported the matter to the police. Though the police was present there, but did not stop the accused persons from beating the petitioner and other persons. The injured were

taken to the hospital and their medical examination was conducted. In this scuffle, injuries were caused to Kuldeep son of Babu Ram, who got fracture on his arm and Balu son of Chhattar Singh, who got fracture on his finger and thumb of right hand. The petitioner had filed a complaint against the respondents under Sections 147/148/149/ 323/325/307 and 506 IPC on 12.2.2011.

It has further been alleged by the petitioner that in his complaint, the petitioner had arrayed 50 persons as accused, but all the accused have not been summoned by learned Magistrate and only selective accused, namely, respondent No.1 Anil Kumar Arya, respondent No.4 Jagbir, respondent No.5 Satyawar, respondent No.7 Rajesh, respondent No.8 Kuldeep, respondent No.32 Chhattar Singh and respondent No.47 Chandi Ram have been summoned to face trial under Sections 147/148/149/323/325 IPC on compliance of Section 204 Cr.PC for 17.10.2015 by learned Magistrate vide impugned order dated 24.9.2015.

Against the said order dated 24.9.2015 passed by learned Magistrate, whereby selective 7 accused were summoned to face trial, the petitioner preferred a revision petition before the Court of Session, Hisar. However, said revision petition was also dismissed by learned Additional Sessions Judge, Hisar vide order dated 16.3.2016.

It is in these circumstances, the petitioner has filed the present petition under Section 482 Cr.PC for quashing the aforesaid orders.

Learned counsel for the petitioner has contended that in support of his complaint, the petitioner-complainant has examined as many as 14 witnesses before the learned Magistrate. However, learned Magistrate has ordered for summoning of only 7 accused. No reason has been given by learned Magistrate for summoning only selective persons and not summoning the other accused. No such finding has been recorded as to why the remaining accused were not ordered to be summoned.

In support of his contentions, learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in ***Sonu Gupta Versus Deepak Gupta and others 2015(2) RCR (Criminal) 32*** wherein it has been held that at the stage of cognizance and summoning the accused, the Magistrate is to find out whether prima-facie case has been made out for summoning the accused persons. At this stage, learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence or the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. It has also been held in the said judgment that cognizance is taken of the offence and not the offender.

Learned counsel for the petitioner has further submitted that in these circumstances, the respondents named in the complaint were required to be summoned to face trial.

I have heard learned counsel for the petitioner.

A bare perusal of the complaint as well as statement of petitioner-complainant as CW1 (inadvertently written as CW1 instead of CW4) reveals that though the petitioner has filed complaint impleading 50 persons sought to be summoned, but no role has been attributed to each of the accused. There is only bald statement that respondent No.1 and other accused attacked on the complainant side. Moreover, even if it is assumed that there are injuries on the part of complainant side, those injuries are limited and such limited injuries cannot be attributed to out-numbered accused.

In support of his complaint, the complainant examined Dr. Tej Pal Sharma, Medical Officer, General Hospital, Hisar, who produced the medico-legal reports (MLRs) of injured Balli and Kuldeep as CW1/A and CW2/A respectively and found no bone injury on their person. Similarly, Dr. Dalel Singh, Medical Officer, General Hospital, Hisar was examined as CW2, who proved four injuries on the person of Balli vide MLR Ex.CW2/A, two injuries on the person of Satbir vide MLR Ex.CW2/B and two injuries on the person of Krishan vide MLR Ex.CW2/C.

Perusal of the paper book also reveals that an FIR No.372 dated 7.9.2010 under Sections 147, 148, 149, 323, 307, 395, 427, 452, 506, 332, 353 and 186 IPC as well as Sections 3 and 4 of Prevention of Damage to Public Property Act, 1984 was registered by the police against 55-60 persons

including the witnesses of petitioner-complainant for the alleged incident. However, the present complaint was filed by the complainant on 12.2.2011 as a counter-blast to the said FIR. The plea of the petitioner of limited injuries with unlimited accused cannot be accepted.

In view of the above, this Court finds no illegality, irregularity or perversity in the impugned orders passed by the Courts below and the present petition, being devoid of any merit, is dismissed.

April 07, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE