

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16924-2015

Date of Decision: February 19, 2016

Jaswant Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. S.P.S. Sidhu, Advocate,
for the petitioners.

Mr. Mikhail Kad, AAG, Punjab,
for respondent No. 1.

Mr. Harsh Neyol, Advocate,
for respondent No. 2.

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

NARESH KUMAR SANGHI, J. (Oral)

Challenge in the present petition is to the order dated
02.06.2014 (Annexure P-2), passed by learned Sub Divisional
Judicial Magistrate, Abohar, whereby the petitioners were

summoned to face trial for the offences punishable under Sections 148, 323, 324, 326 and 450 read with Section 149, IPC.

Learned counsel for the parties are in unison that the petitioners as well as respondent No. 2 had lodged the report(s) to the police with regard to the occurrence which had taken place on 28.02.2009 at 8:00 a.m. They are further in unison that the police did not find anything in favour of both the complaints lodged with the police by both the private parties and, as such, the cancellation report(s) were presented before learned Area Judicial Magistrate. They further conceded that while passing the impugned order, the learned Summoning Court has failed to consider the said cancellation report(s) presented by the police and, as such, there was non-compliance of Section 202, Cr.P.C. They are further in unison that in view of the above fact, the case can be remitted to learned Summoning Court for passing the order afresh after taking into consideration the cancellation report(s) presented by the police.

I have heard learned counsel for the parties and with their able assistance, gone through the material available on record.

In the matters of **Madhu Rani v. Prem Kumar & Ors.**, 2015 (3) RCR (Criminal) 889 (P&H) and **Kuldip Raj**

Mahajan v. Hukam Chand, 2008(1) RCR (Criminal) 370 (P&H), this Court has held that at the time of passing of the summoning order, it was incumbent for the Magistrate to consider the report under Section 202, Cr.P.C., with regard to the same incident tendered by the police.

In view of the admission by learned counsel for the parties and taking into consideration the ratio of the judgments mentioned hereinabove, the impugned order dated 02.06.2014 (Annexure P-2), is hereby set aside and the case is remitted to the learned Summoning Court for passing the order afresh, after taking into consideration the cancellation report(s) submitted by the police in a case arising out of FIR No. 45 dated 28.02.2009, for the offences punishable under Sections 148, 323 and 341 read with Section 149, IPC, registered at Police Station, Sadar, Abohar, District Fazilka.

It is made clear that Court is not bound to act as per police report submitted before it. However, consideration of that report is necessary.

Disposed of accordingly.

The parties to the *lis* shall appear before learned Area Judicial Magistrate/Summoning Court on 18.03.2016 at 10:00 a.m.

A copy of the order be sent to the learned Summoning
Court immediately.

(NARESH KUMAR SANGHI)
JUDGE

February 19, 2016
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