

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

CRM-M-18012 of 2016.

Decided on:-23.05.2016.

Gurpiar Singh.

.....Petitioner.

Versus

Prem Singh 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. Bhavyadeep Walia, Advocate
for the petitioner.

HARI PAL VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 482 Cr.PC seeking quashing of order dated 23.2.2016 passed by learned Additional Sessions Judge, Patiala whereby the criminal revision petition filed by the respondents against order dated 11.8.2012 passed by learned Judicial Magistrate, Patiala, has been partly allowed.

Vide order dated 11.8.2012, learned Magistrate has ordered summoning of accused SHO Harpreet Singh, ASI Harpreet Singh, Constable Gurnam Singh, Constable Mastan Singh and Jaswant Singh Reader to face trial under Sections 365/323/325/342/506 IPC. Vide the same order, learned Magistrate has summoned the respondents-accused to face trial under Sections 436/511, 342 and 323 IPC. Learned Magistrate has dismissed the

complaint qua accused ASI Gurdev Singh whereas the remaining accused were also ordered to be summoned under Sections 147/447 read with Section 149 IPC and Section 120-B IPC as well.

Briefly stated, the petitioner-complainant filed a complaint under Sections 364, 366, 323, 324, 325, 342, 392, 395, 447, 452, 506, 436, 511, 425, 148/149/34/120-B IPC before learned trial Court on the allegations that on 1.3.2006 at about 11.00 a.m., he along with his cousin Lakhwinder Singh son of Jit Singh and nephew Lakhwinder Singh son of Mohinder Singh was cutting the fodder in his fields. At that time, Harpreet Singh, SHO Police Station Julkan along with ASI Harpreet Singh, ASI Gurdev Singh, Constable Gurnam Singh, Constable Mastan Singh and Jaswant Singh Reader came there in a Government vehicle. The respondents-accused were also accompanying them and they were in two Maruti cars of white colour. They forcibly picked up the complainant, his cousin and nephew and put them in the police van. Jagdev Singh and Joginder Singh have witnessed the incident. They were taken to Police Station Julkan and on reaching there, Harpreet Singh gave Dang blows on the foot of Lakhwinder Singh, nephew of the complainant, which resulted into fracture of his foot. ASI Harpreet Singh also slapped on the left ear of said Lakhwinder Singh due to which his hearing capacity has been adversely effected. Constable Mastan Singh gave a stick blow on the left foot of Lakhwinder Singh whereas Constable Gurnam Singh gave a fist blow on his nose. Jaswant Singh Reader gave fist

blows on his thigh. The complainant, his cousin and nephew were put into the police lock up. Later on, the police implicated them in a false case under Sections 107/151 Cr.PC. The complainant, his cousin and nephew were threatened that in case they tried to make any complaint against the police officials, they would be killed.

It has been alleged that the motive behind the aforesaid atrocity is that father of the complainant had filed a civil suit against accused Sarup Singh in District Courts, Patiala as the accused intended to block the passage leading to the house of the complainant. In the said suit, the Court passed an injunction order in favour of father of the complainant. The respondents-accused in connivance with other accused, who were police officials wanted to block the said passage.

The order dated 11.8.2012 passed by learned Magistrate was subject matter of revision petition before learned Additional Sessions Judge, Patiala.

Learned counsel for the petitioner-complainant has argued that the respondents were liable to be summoned for offences under Sections 436 and 511 IPC. He has submitted that learned Additional Sessions Judge has wrongly set aside the summoning of the respondents by misinterpreting the facts of the present case.

He has further contended that occurrence in the present case has taken place in two different parts. The first occurrence took place on

27.2.2006 when the respondents trespassed into the house of the petitioner and his father Baldev Singh had tried to put the house on fire by pouring kerosene. However, the accused were prevented from lighting the match-stick by the people. Therefore, attempt on the part of respondents-accused to put the house of Baldev Singh on fire is established.

Learned counsel for the petitioner has further contended that the second occurrence took place on 1.3.2006/2.3.2006 and the offence has been committed by the respondents in connivance and with the active help of the police officials, who are arrayed as accused No.1 to 6 in the complaint. They not only picked up and retained the complainant, his cousin and nephew but also gave grievous injuries due to which Lakhwinder Singh suffered a fracture on his right foot.

I have heard learned counsel for the petitioner, perused the impugned order and find that the impugned order dated 23.2.2016 passed by learned Additional Sessions Judge, Patiala does not warrant any interference. No case under Section 436 read with Section 511 IPC is made out against the accused as no steps were taken by them to set the house on fire.

The petitioner has alleged that the incident took place on 27.2.2006 when accused Lakhbir Singh and Laddi had poured kerosene on the door of house of father of the complainant with a view to set the said house on fire. However, they could not ignite the match-stick as people had reached the spot. Further more, statement made by the complainant in

preliminary evidence is conspicuously silent regarding the incident dated 27.2.2006.

The distinction between an intention to commit the offence, preparation to commit the offence and attempt to commit the offence has well been explained by Hon'ble Madras High Court in ***Narayanaswami Pillai Versus Emperor AIR 1932 Madras 507***. It was further elaborated by Hon'ble Supreme Court in ***Malkiat Singh and another Versus The State of Punjab AIR 1970 Supreme Court 713*** in which it has been held as under:

“4. The question to be considered in this appeal is whether upon the facts found by the lower courts any offence has been committed by the appellants. It is not disputed that the truck carrying the paddy was stopped at Samalkha Barrier which is 32 miles from Delhi. It is also not disputed that the Delhi-Punjab boundary was, at the relevant point of time, at about the 18th mile from Delhi. It is therefore evident that there has been no export of paddy outside the State of Punjab in this case. The truck with the loaded paddy was seized at Samalkha well inside the Punjab boundary. It follows therefore that there was no export of paddy within the meaning of Para 2(a) of the Punjab Paddy (Export Control) Order, 1959. It was however argued on behalf of the respondent that there was an attempt on the part of the appellants to transport paddy to Delhi, 'and so there was an attempt to commit the offence of export. In our opinion, there is no substance in this argument. On the facts found, there was no attempt on the part of the appellants to commit the offence of export. It was merely a preparation on the part of the appellants and as a matter of law a preparation for committing

an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit 'a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the actus reus of a criminal attempt. The sufficiency of the actus reus is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiently proximate to it to amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson, however clearly it may be proved that he intended to set fire to a haystack at the time of the purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but, if he bends down near the stack and lights a match which he extinguishes on perceiving that he is being watched, he may be guilty of an attempt to burn it. Sir James Stephen, in his Digest of Criminal Law, Article 50, defines an attempt as follows:

'an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of acts begins cannot be defined, but depends upon the circumstances of each particular case.'

The test for determining whether the act of the appellants

constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey. Section 8 of the Essential Commodities Act states that "any person who attempts to contravene, or abets a contravention of, any order made under Section 3 shall be deemed to have contravened that order". But there is no provision in the Act which makes a preparation to commit an offence punishable. It follows therefore that the appellants should not have been convicted under Section 7 of the Essential Commodities Act."

The provision of Section 436 read with Section 511 IPC can be invoked if the accused had made an attempt to set the house of the complainant on fire. Interestingly, in the case in hand, the match-stick was never used and the only allegation that the kerosene was poured at the door of the house of complainant is not sufficient to invoke Section 436 IPC. Even mere setting the door of house of the complainant on fire cannot destroy the house so as to attract the provision of Section 436 IPC. Therefore, this Court finds that the petitioner-complainant has failed to satisfy the ingredients of offence under Section 436 read with Section 511 IPC.

Accordingly, affirming the impugned order dated 23.2.2016 passed by learned Additional Sessions Judge, Patiala, the present petition, being devoid of any merit, is dismissed.

May 23, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE