

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 264

Criminal Miscellaneous No.M-2352 of 2016 (O & M)
Date of Decision: February 16, 2016

Sunita Devi

..... PETITIONER

VERSUS

State of Haryana & others

..... RESPONDENT(S)

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CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

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PRESENT: - Mr. S.S. Momi, Advcoate, for the petitioner.

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Jaspal Singh, J

1. Challenge in this petition preferred under Section 482 Cr.P.C. is to order dated March 31, 2014 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Mohindergarh whereby the complaint filed by the petitioner was dismissed as well as to order dated February 12, 2015 (Annexure P-4) passed by the Additional Sessions Judge, Narnaul, vide which, the revision filed by the petitioner was dismissed upholding order dated March 31, 2014.

2. The facts of the case are that on March 14, 2013 at about 10.30 PM, respondents barged into house of the petitioner, accompanied by 5/6 persons and pressurized her as well as her father to fill up the pronote and receipt which they were carrying and when she refused to do so, they pointed a pistol on her sons's head and then got filled two pronotes from them in back dates. Not only this, they also got recorded the voice of her father to say that he has undertaken the re-payment of the mother after making another arrangement in respect thereof. They also gave beatings to her and claimed that they will recover the amount, subject matter of the aforesaid pronotes & receipts, and in the event of non-payment, they will be done to death. The matter was reported to police immediately. Since the police did not take any action, she was constrained to file a complaint before learned jurisdictional Magistrate.

3. While assailing the impugned order(s), it has been vehemently argued by learned counsel for the petitioner that both the courts below have relied upon an enquiry report conducted by the police under Section 202 Cr.P.C. which is not at all a criteria to consider, at the time of summoning of a person as an accused. Similarly, the courts below have also appreciated the legal proposition that at the time of summoning of a person as an accused, only the allegations are to be taken into consideration. In the case in hand, there is unrebutted evidence which has been ignored and dis-believed by both the courts below, without any rhyme or reason.

4. Learned counsel for the petitioner further argued that no proper opportunity to adduce the evidence or of being heard has been

afforded by learned trial court. Since there are specific allegations which are unrebutted and unchallenged, cannot be ignored and dis-believed and in this regard, both the courts below have committed an error. Thus, the impugned orders are not sustainable in the eyes of law and liable to be dismissed by way of acceptance of instant petition.

5. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner but does not find any substance therein.

6. A glance at the impugned order passed by learned revisional court clearly transpires that after examination of the petitioner – complainant as a witness, on the request of complainant, the complaint was sent for enquiry under Section 202 Cr.P.C. in which, not only the complainant but the alleged eye witnesses namely Ram Kumar and Lal Chand, whose names also find mention in the list of witnesses annexed to the complaint, were examined by the police. Their statements were recorded and ultimately, the concerned officer came to the conclusion that infact, they are not eye witnesses to the occurrence. Since the matter was referred for enquiry under Section 202 Cr.P.C. at the instance of petitioner – Sunita Devi, now, it does not lie in her mouth to say and allege that the enquiry report submitted by the police cannot be relied upon and taken into consideration by learned Magistrate.

7. As far as contention of learned counsel for the petitioner that appropriate opportunity to lead evidence has not been provided to petitioner is concerned, the same is not tenable, especially in the circumstances that she appeared as a witness and at her request, the

matter was referred under Section 202 Cr.P.C. to police which submitted its report observing that no such occurrence has taken place.

8. As regards the contention of learned counsel for the petitioner that the court cannot look into enquiry report or evidence and has no jurisdiction to scrutinize the evidence adduced by the complainant at the stage of summoning, is of no legal weight. It is well settled proposition of law that while summoning of a person as an accused on the basis of complaint, it is obligatory upon the concerned court to apply his mind to the facts and evidence of the case as well as law applicable thereto. He is obliged to carefully scrutinize evidence brought on record and may himself put questions to the complainant and witnesses to find out the falsity or truthfulness of the allegations. Moreover, the summoning of an accused in a criminal case is a serious matter. It is not suffice that the complainant appeared in the court assisted by the witnesses to put criminal law into motion. The order passed by the Magistrate summoning the accused must reflect that he has applied his mind to the circumstances and evidence brought on record, nature of allegations made in the complaint in respect thereof. Thus, in view of aforesaid proposition of law, it cannot be said that learned Magistrate or the revisional court has not exercised the judicial discretion with them while passing the impugned orders. Both the orders passed by the courts below are absolutely in consonance with the evidence as well as legal proposition of law and do not call for any interference by this Court. There is no infirmity or illegality in the impugned orders.

9. In the light of what has been discussed above, instant petition fails and is dismissed.

February 16, 2016
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(Jaspal Singh)
Judge