

CRM No. M-24207 of 2016

DECIDED ON: SEPTEMBER 01, 2016

OM PARKASH

.....PETITIONER

VERSUS

HAWA SINGH & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Saurabh Arora, Advocate
for the petitioner.

JASPAL SINGH, J

By virtue of instant petition preferred under Section 482 Cr.P.C., petitioner has sought the setting aside of the order dated October 27, 2014 passed by learned Sub Divisional Judicial Magistrate, Sohana vide which a complaint titled as **Om Parkash vs. Hawa Singh & others;** filed by complainant under Sections 148, 149, 427, 447, 452, 506, 34 and 120-B IPC against the respondents/accused, has been dismissed as well as the judgment dated January 18, 2016 passed by learned Additional Sessions Judge, Gurgaon whereby, the revision petition preferred by the Revisionist/Complainant against the order dated October 27, 2014, has been dismissed.

It has been vehemently argued by learned counsel for the petitioner that in preliminary evidence, complainant examined as many as three witnesses. He himself appeared as CW-1 and has unfolded the allegations contained in the complaint. His statement further stands fortified by the testimony of CW-

2/Denesh Kumari and CW-3/Rahul; besides the oral evidence, petitioner has

also placed and proved on record the various documents Ex.CW1/A, Mark T-1 to T-9. The oral testimony of the witnesses as well as documents have been ignored and disbelieved by the learned Magistrate without any rhyme and reason. It has simply been observed by the learned Magistrate that the testimony of CW-1/complainant does not find corroboration from any independent witness, further report made by concerned SHO under Section 202 Cr.P.C. has been wrongly relied upon and the learned Magistrate should have conducted an independent inquiry. Similarly, the dismissal of revision petition preferred by the petitioner is also illegal as all the relevant facts were not considered by the Revisional Court, while passing the order dated January 18, 2016.

Moreover, the report under Section 202 Cr.P.C. was sought from the same police station in which the occurrence has taken place. Not only this, even the SHO who made the report was a party/accused in the complaint. Thus, the placing of reliance upon report under Section 202 Cr.P.C., is absolutely wrong, which has resulted into prejudice to the petitioner.

This Court has given a deep thought to the submissions made by learned counsel for the petitioner and have scrutinized the impugned orders.

At the very outset, it would be pertinent to mention that by now it is well settled that summoning of a person, as an accused in a criminal case, is a serious matter and the criminal law cannot be set into motion, as a matter of course, by examining one or two witnesses. It is also equally settled that judicial process should not be an instrument of oppression or needless harassment. There lies responsibility and duty on the magistracy to find out whether the concerned accused should be legally responsible for the offence charged for only satisfying that law casts liability or create offence against a

juristic person or the persons impleaded then only the process should be issued.

Adverting to the facts of the case in hand, report was sought from the concerned SHO who after visiting the spot and examining the other witnesses submitted his report, in which he clearly observed that no such occurrence has taken place and the allegations levelled by the complainant are false. Simply, that the SHO has also been made a party in the complaint does not mean that he cannot conduct an inquiry. Simply alleging that SHO did not take an action on the complaint moved by the complainant does not mean that he did not conduct a proper inquiry.

In the light of what has been discussed above, this Court does not find any infirmity or illegality in the impugned orders. Rather, it emerges that the complaint as well as revision petition is nothing but an abuse of process of law. As such, it stands dismissed.

SEPTEMBER 01, 2016
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(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No