

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

CRM No.M-36444 of 2016 (O&M)

Date of Decision: October 17, 2016

Prem Kumar

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravi Sodhi, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Haryana and Daljeet Singh, Inspector for quashing the impugned order dated 30.3.2013 passed by learned JMIC, Sirsa whereby the complaint No.44-1/12 dated 23.2.2012 under Sections 166, 217 and 218 IPC, filed by the petitioner has been dismissed and also the impugned judgment dated 11.07.2016 passed by learned Addl. Sessions Judge, Sirsa, whereby the revision petition filed by the petitioner against the order dated 30.03.2013 has been dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

The brief facts of the case as noted down in the order dated 30.03.2013 passed by learned JMIC, Sirsa, are as under:-

“2. *The brief facts of the complaint are that the complainant*

has provided that he married his daughter Anuradha with one Rattan Sing in Feb. 2003, as per Hindu rites and ceremonies. It is further provided that out of the said wedlock, his daughter gave birth to a son and a daughter and they were living in joint family. The complainant has contended that said Rattan Singh had liaison with other woman and despite resistance from Anuradha, Rattan Singh did not stop his activities and it led to strained relations between Anuradha and Rattan Singh. That each member of the family harassed Anuradha to stop publicising the bad character of Rattan Singh as it tarnished the image of the family. It is provided that on 23-2-2009 at about 9/9.30 AM, out of agnominy, Rattan Singh, his brother and other family members dozed kerosene on Anuradha and her children and set them ablaze and due to same they all suffered 90% burn injuries and brought to the General Hospital for medical examination. On that , the medical officer through a ruqa intimated about the admission of the three persons and advised for arranging for recording of dying declaration to the SHO, Police Station City Sirsa. Thereafter Insp. Daljeet Singh (hereinafter 'the accused') reached at the General Hospital and directed SI Sita Ram to get fitness certificate from the Medical Officer, and thereafter approached Sh.S.K.Sharma, JMIC Sirsa for recording dying declaration of Anuradha. However, vide order dated 23-2-2009, the ld JMIC declined to record the dying declaration in the absence of FIR. After that, without getting fitness certificate from the Medical Officer and in violation of Punjab Police Rules, Chapter 25.21, relating to recording of dying declaration by the police, the accused, being a public servant charged with recording of dying declaration, in connivance with the culprits, recorded their statement, which he knew to be incorrect, with the intention to save the actual assassins from prosecution and punishment. The accused also made an endorsement on the said statement and got the FIR No.21 , dated 23-2-2009 registered u/ss 306, 498 A and 511 IPC. Thereafter the accused requested the said ld. JMIC to record the dying declaration of Anuradha, whereupon the ld. JMIC, after obtaining fitness certificate from the Medical Officer, recorded the statement of Anuradha as per rules. It is further provided that the children of Anuradha succumbed to the burn injuries on 24-2-2009, while Anuradha died during treatment, on 26-2-2009. Autopsy of all the three was done and the accused added sections 302, 207 r/w 34 IPC and deleted the previous section 306 IPC. The accused arrested Rattan Singh only on 24-2-2009 and all others were found innocent and on completion of investigation, Rattan Singh was sent to face trial fro the offence u/s 306 IPC. During trial, Rattan Singh was admitted to bail on 17-6-2009 and he was charge sheeted of u/s 302 IPC. During said trial, after examination of material PWs, Raj Kumar, his wife Raman Devi and his mother Indro Devi were summoned u/s 319 Cr.P.C. to face trial along with

main accused Rattan Singh. The trial ended in conviction on 12-1-2012 and the accused were sentenced to undergo life imprisonment and fine of each 10,000/- each. Therein the accused also appeared as a prosecution witness. In the said judgment, under para 30 thereof, the ld. Sessions Judge, observed that the dying declaration recorded by the accused was discarded and the one recorded by ld. JMIC was relied upon. The ld. Court also disbelieved the version of the accused that the dying declaration by Anuradha before the ld. Magistrate was tutored one and it also observed that the investigation in that case was not conducted in fair manner. On these grounds, the complainant has filed the present complaint praying that the accused, being a public servant disobeyed the provisions of law with intention to save the assassins from punishment and prepared incorrect statement knowingly and causing disappearance of evidence of the offence, to screen the offenders and as such the accused committed the offence u/ss 166, 217 and 218 IPC for which he is liable to be summoned and face trial.

Learned Magistrate after going through the preliminary evidence, dismissed the complaint and did not summon the accused vide order dated 30.03.2013. A revision was filed by the petitioner and learned Addl. Sessions Judge, Sirsa, also dismissed the revision vide judgment dated 11.07.2016.

Aggrieved from the above-said order and judgment passed by the Courts below, present petition has been filed by the petitioner.

From the perusal of the order and judgment passed by the Courts below, I find that no illegality has been committed by the Courts below nor the findings can be held as perverse or against the evidence. The complaint was filed mainly on the ground of the observation made in the judgment Ex.PL, wherein the Court has discarded the statement Ex.PI recorded by the accused as PW-18, since it was contrary to the provisions under Rule 25.21 of the Punjab Police Rules. The Court held that if the accused violated the provision of rule 25.21, yet the preliminary evidence

on the file is not sufficient enough to show to the satisfaction of the court that the accused acted contrary to the said provisions, either to cause any injury to any person or to save any person from legal punishment or to save any property from forfeiture or charge.

The Court held that it may be an ignorance on the part of the accused to follow the said procedure and in the absence of any direct fact showing such intention as aforesaid of the accused, he cannot be said to have committed the acts constituting the said offences. Learned Addl. Sessions Judge, Sirsa, also in the judgment dated 11.07.2016, after discussing the law in detail, found no illegality in the order passed by learned Magistrate.

The perusal of the record further shows that the present accused was the Investigating Officer of the case FIR No.21 dated 23.02.2009 under Sections 306 and 498-A IPC. The dying declaration of Anuradha has been recorded by the present petitioner without getting the fitness certificate from the medical officer and in violation of Punjab Police Rules.

The dying declaration was recorded in discharging the official duty by the public servant and before taking the cognizance against him, previous sanction is necessary. In the present case, no sanction under Section 197 Cr.P.C. has been obtained by the complainant before filing the complaint. At the time of arguments, it is argued that challan in that case was presented under Section 302 IPC against the main accused and further the additional accused, who were summoned under Section 319 Cr.P.C. have also been convicted. Even if it is taken that the Investigating Officer has recorded the dying declaration in violation of Punjab Police Rules, in no

intention of connivance etc.

In view of the above discussion, I find that the findings given by both the Courts below are correct and as per law. In no way, the order and judgment passed by the Courts below can be held as perverse or amounts to miscarriage of justice.

Therefore, finding no merit in the present petition, the same is dismissed.

October 17, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No