

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM No.M-39967 of 2013(O&M)****Date of Decision: April 04, 2016**

Harminder Singh alias Hindri and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pawan Kumar, Senior Advocate with
Mr.Abhimanyu Batra, Advocate
for the petitioners.

Mr.A.S.Klar, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Amandeep Singh Rai, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Dharmatma Singh for quashing the impugned order dated 15.10.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana vide which the application for discharging the petitioners has been dismissed without considering the facts and circumstances of the case and without taking into consideration the investigation report conducted by SP City-II, Ludhiana, in which the petitioners have been found innocent in case DDR No.15 dated 13.12.2004 registered at Police Station Sadar,

District Ludhaina, in which challan has been presented against the petitioners as a cross-case in case FIR No.276 dated 12.12.2004, under Sections 342, 323, 324, 148 and 149 IPC with further prayer to discharge the petitioners.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record,

From the record, I find that FIR No.276 dated 12.12.2004 had already been registered against respondent No.2 under sections 452, 324, 323, 506, 326 read with 34 IPC. In that case, a cross-version was recorded and the challan was presented against present petitioners. Then the application was filed and learned Magistrate gave permission to further investigate the matter and then Superintendent of Police, City-II, Ludhiana submitted the report to DIG, Ludhiana, in which he stated that some injuries given to Dharmatma Singh etc. were given in self defence and the cross-version is required to be cancelled. A petition was filed before this Court and the cross-case was quashed. Then appeal before the Hon'ble Supreme Court was filed and the Hon'ble Supreme Court ordered as under:-

“ XXX XX XX XXX

As we have found in the present case that learned Magistrate had not applied his mind to the merits of the reports filed under Section 173, Cr.P.C., we are of the considered opinion that the exercise of power by the High

Court under Section 482 Cr.P.C., was at an interlocutory stage and was not warranted in the facts of this case.

14. In the result, the appeal is allowed and the impugned order dated 25.03.2008 is set aside. The police will forward the further report of the Superintendent of Police, City-II, Ludhiana, to the Magistrate concerned and the learned Magistrate will apply his mind to the police report already forwarded to him and the further report of further investigation forwarded to him and take a final decision in accordance with law after considering the objections, if any, of the appellant against the further report of further investigation.”

After passing the order by the Hon'ble Supreme Court, accused moved application for their discharge on the basis of report of SP City-II, Ludhiana that no offence is made out against them and requested for cancellation of cross-case. Learned JMIC, Ludhiana, dismissed the application without discussing any report of SP City-II, Ludhiana, only on the ground that accused persons had not appeared in this case and the application was dismissed being not maintainable. The approach of learned JMIC, Ludhiana in passing this order dated 15.10.2013 is not as per law. Even if it is taken that accused were not appearing personally in the case, even then the application for discharge cannot be dismissed. At the most, the Court might have taken steps to procure the presence of the accused by keeping this application pending. The perusal of the impugned order shows that presence of accused No.1, 2, 4 to 7 and 9 were exempted from appearing personally in this case vide order dated 15.07.2008 but after withdrawing CRM No.M-17197 of 2008 by accused persons, these accused persons had not appeared in this case. Therefore, the right approach in this case was to procure the presence of the

accused first and then to decide the application or the order should have been passed directing the accused to appear in person before deciding the application. Only on this ground that accused did not appear, it cannot be held that application is not maintainable and it should be dismissed. It is settled law that the rights of the parties should be determined on merits as far as possible and the Court should not go into the technicalities of law.

Moreover, as per order of the Hon'ble Supreme Court, the police was directed to forward the further report of the Superintendent of Police, City-II, Ludhiana to the Magistrate concerned and learned Magistrate will apply his mind to the police report already forwarded to him and further report of further investigation forwarded to him and take a final decision in accordance with law after considering the objections, if any, against the further report of further investigation. In the present case, after filing of the application for discharge by the accused persons in the cross case, learned Magistrate has not discussed the report of SP City-II, Ludhiana nor applied his mind and dismissed the application only on the technicalities that accused have not appeared before the Court. Therefore, the order dated 15.10.2013 passed by learned JMIC, Ludhiana, is not as per law and the same is set aside. The matter is remanded back to learned JMIC, Ludhiana to reconsider the matter as per law and in view of the order passed by the Hon'ble Supreme Court. The present petitioners are also directed to appear before lower Court on 29.04.2016. It is made clear that if the petitioners-accused did not appear before learned

Magistrate in person, then the Magistrate is at liberty to procure their presence by coercive methods.

April 04, 2016
Vgulati

(INDERJIT SINGH)
JUDGE