

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

**CRM-M-391-2016
DECIDED ON: May 05, 2016**

SANDEEP RANI

....PETITIONER

VERSUS

STATE OF PUNJAB & ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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?

Present: Mr. Gurpal Singh Sandhu, Advocate,
for the petitioner.

JASPAL SINGH, J.

This is a petition preferred under Section 482 of the Code of Criminal Procedure seeking quashing of order dated 07.08.2014 vide which complaint of the petitioner has been dismissed by Id. Sub Divisional Judicial Magistrate, Jalalabad (W) as well as to quash the order dated 08.10.2015 passed by Id. Additional Sessions Judge, Fazilka vide which, revision petition filed by the petitioner against the aforesaid order has been dismissed.

2. While assailing impugned order, it has been argued with vehemence by learned counsel for the petitioner that though there is sufficient evidence adduced by the petitioner to substantiate the evidence in the complaint but both the courts below have wrongly dismissed the complaint lodged against

the accused persons.

3. Observations given by the courts below are that the petitioner has not made complaint in the concerned police station. However, it is the specific case of the petitioner that she gave information at Police Station City Jalalabad but the police did not take any action, which necessitated the filing of the regular complaint before the Jurisdictional Magistrate.

4. Learned counsel for the petitioner contends that another ground taken by courts below while dismissing the complaint is that though as per the allegations unfolded in the complaint the accused was armed with scissor but the injuries on the person of the petitioner were blunt and had the injuries were inflicted with scissor, it would have resulted into causing incised wound(s). Moreover, it has been specifically stated by the complainant/petitioner while appearing in the witness box that the accused persons inflicted injuries with kick blows beside inflicting slaps to her but the Id. Trial court has ignored all these facts and evidence.

5. Learned counsel for the petitioner further contends that at the stage of summoning of accused persons, only prima facie case is to be seen by the concerned Magistrate and Magistrate is not required to scrutinize the evidence, if, the evidence brought on record by the complainant is sufficient to warrant the conviction of the accused persons as has been done in the instant case. Thus, the impugned orders are not sustainable in the eyes of law and liable to be set aside. Consequently, the case deserves to be returned to the Id. Magistrate for re-appreciating the evidence and to pass a fresh order.

6. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner but is not in agreement with the

same.

7. No doubt, at the time of summoning of a person as an accused, only prima facie case is to be seen but at the same time the court cannot lost sight of the fact that conviction of an accused in criminal case is matter of course, it is not that the complainant has to bring only two witnesses to support his/her allegations in the complaint. The order of the Magistrate to summon the accused must reflect that he has applied his mind to the facts as well as law applicable thereto. He has not only to examine the nature of allegations made in the complaint but the evidence brought on record oral as well as documentary in support thereof. The Magistrate is a silent spectator at the time of recording preliminary evidence before summoning of a person as an accused. Rather, he is duty bound to carefully scrutinize the evidence brought on record and even he has got ample power to put question to complainant and the witnesses to find out the truthfulness or falsity of the allegations.

8. In the case in hand, the petitioner was medically examined by Dr. Parveen Kumar Garg on 19.12.2009. Subsequent thereto, she was admitted in the GGS Medical College and Hospital on 26.12.2009 where she got herself aborted. So, in such situation, the courts below have rightly observed that had she been kicked in her stomach on 19.12.2009, she must have got treated herself immediately and was not supposed to wait up-to 26.12.2009. There is nothing on the record to suggest that she had to get herself aborted on account of injuries sustained by her at the hands of accused on 19.12.2009. She was not otherwise required to wait for a week for getting herself aborted. Not only this, she did not opt to lodge a complaint to concerned police station immediately after the occurrence. No such copy of complaint has seen the light of the day. The

statement of the complainant in this regard can be said to be self-serving. The delay in lodging the complaint is also fatal and the observation made in this regard by both the courts below is well founded.

9. Here, it would also be pertinent to mention that though the accused No.3 is alleged to have open attack on the complainant with scissor but to the utter surprise, perusal of MLR reveal that the kind of weapon used in injuries No.1 and 2 was blunt. So, all these factors coupled with each other leaves to draw inference that the allegations levelled in the complaint are untrue. Even otherwise, during the course of arguments, learned counsel for the petitioner could not point out any illegality, perversity or infirmity in the orders passed by both the courts below.

10. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same is dismissed.

May 05, 2016
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(JASPAL SINGH)
JUDGE