

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-40261 of 2015 (O&M)
Date of Decision: February 15, 2016

Dharam Singh

...Petitioner

VERSUS

Suraj Bhan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mukesh Rao, Advocate
for the petitioner.

Mr.Himmat Singh, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India against respondents Suraj Bhan ASI and State of Haryana for issuance of direction for partly quashing the order dated 15.11.2014 passed by learned Sub Divisional Judicial Magistrate, Kosli, insofar as it declined to summon the respondent Suraj Bhan and also judgment dated 03.11.2015, whereby the revision against the order dated 15.11.2014 filed by the petitioner was dismissed by learned Addl. Sessions Judge, Rewari.

Notice of motion was issued in this case and learned State counsel appeared and contested the petition.

Learned counsel for the petitioner, at this stage, contended

that only two witnesses remain to be examined and if the arguments are not heard today then the present petition would become infructuous and stated that he is ready with the arguments.

Learned State counsel contended that he has no objection if the present case is heard on merit today.

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

From the record, I find that in the present case, challan has been presented against Sushil Kumar under Sections 447 and 506 IPC in case FIR No.51 dated 03.08.2012. An application was filed by Dharam Singh-present petitioner which was duly forwarded by learned APP for summoning Shekhar and ASI Suraj Bhan as additional accused.

Learned SDJM, Kosli, vide order dated 15.11.2014 summoned accused Shekhar but dismissed the application qua ASI Suraj Bhan.

It is stated in the application that complainant has also levelled allegations against ASI Suraj Bhan that he refused to take action against the accused and pressurized the complainant to do the compromise.

Learned SDJM, Kosli, after discussing the evidence on record held that there is no convincing evidence to show that ASI Suraj Bhan has committed any offence. Firstly, in his complaint, the complainant stated that he telephonically contacted ASI Suraj Bhan to whom complaint was marked but he refused to take any action

against the accused and asked him to compromise the matter. However, when the complainant appeared into witness box as PW-1, then he has deposed in his examination-in-chief that in regard to the aforesaid matter, he went to ASI Suraj Bhan and asked about his application but he threatened him and also pressurized him to compromise the matter. The Court held that in view of the different stand, the version given by complainant cannot be believed. Moreover, the complainant in his complaint has nowhere disclosed that from which telephone number he called ASI Suraj Bhan. The complainant has also not mentioned any date on which he telephonically called the proposed accused ASI Suraj Bhan.

From the perusal of the above findings, I find that the impugned order dated 15.11.2014 passed by learned SDJM, Kosli is correct, as per evidence and law. In no way, the impugned order can be held as perverse or against the law. For summoning a person as additional accused, it should appear to the Court that the person to whom the prosecution wants to summon as additional accused is involved in the commission of the offence and should be tried along with the accused already facing the trial. There is no allegation against ASI Suraj Bhan that he has committed any trespass etc. along with other accused. Rather, the enquiry was marked to him. Even if it is taken that he has not taken any action on the complaint of the complainant, even then, no offence is made out. At the most, the action can be taken on administrative side. Even otherwise, if it is taken that he asked for the compromise, even then, no offence is

made out.

In view of the above discussion, I find that findings given by learned SDJM, Kosli in the order dated 15.11.2014 are correct, as per evidence and law. Furthermore, the revision has been filed against the order dated 15.11.2014 and learned Addl. Sessions Judge, Rewari, dismissed the revision by upholding the order vide judgment dated 03.11.2015. The findings given by both the Courts below are correct, as per law and evidence. No illegality has been committed. In no way, these findings can be held as perverse or amount to miscarriage of justice.

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

After completion of the arguments, when this Court expressed its opinion, then learned counsel for the petitioner contended that notice upon respondent No.1 has not been served. I find that there is no necessity of service of notice upon respondent No.1 at this stage, as no adverse order is being passed against him. The service of respondent No.1 is necessary, if any adverse order is being passed against him. Otherwise also, learned counsel for the petitioner himself has requested to address the arguments today itself as the petition is going to render as infructuous.

February 15, 2016
Vgulati

(INDERJIT SINGH)
JUDGE