

244 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRM No. M-5009 of 2014
DECIDED ON: AUGUST 11, 2016

JATINDER KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. H.S. Thiara, Advocate
 for the petitioner.

Mr. B.S. Cheema, DAG, Punjab.

Mr. A.S. Gulati, Advocate
 for respondent No.2.

JASPAL SINGH, J

By virtue of instant petition preferred under Section 482 Cr.P.C., petitioner has sought the quashing/setting aside of order dated August 17, 2013 (Annexure P-1) passed by learned Sub Divisional Judicial Magistrate, Phagwara in a complaint case No. 9, dated March 03, 2009 titled as **S. Paramjit Singh vs. Jatinder Kaur.**

Shortly put, the allegations unfolded by the respondent No.2/complainant are that on September 03, 2005 at 10.00 PM, he had gone to sleep in his room and at about 11.00 PM, somebody switched on the light of his room. As a result of which, he awakened and found his wife Jatinder Kaur

while armed with an “iron sabbal”; that too in a fit of rage. She opened an attack upon him with an “iron sabbal” and dealt its blow on his forehead and then repeated its blow towards him, but to ward off the second blow he raised his left arm and the blow landed on it. The complainant raised hue and cry and in order to save himself, he ran out of the room and when he came out, he found that the outer gate of the house was locked. As such, the complainant had to escape by scaling over the boundary wall of the house. Dr. Arjan Singh and Dr. Onkar Singh attracted to the spot on hearing his hue and cry and then he was taken for medical assistance to Civil Hospital by Dr. Arjan Singh and Dr. Onkar Singh. Though, he reported the matter to the police but it did not take any action. Hence, he was constrained to file a complaint. On the basis of the evidence adduced by the complainant, petitioner has been summoned to face trial under Section 323 IPC vide order dated August 17, 2013.

Aggrieved against the summoning order dated August 17, 2013, petitioner has preferred the instant petition for its quashing.

The contention of learned counsel for the petitioner is that the petitioner has been falsely implicated in the instant case on account of the reason that she has filed some cases against her husband i.e. complainant. In fact, no such occurrence had taken place. Petitioner has been deserted by the complainant-respondent No.2 for the last many years and even two daughters and a son born out of their wedlock, are being brought up by the petitioner. He is not paying any maintenance either to the petitioner or to the children. Moreover, respondent No.2-complainant has concealed the material facts from the court while lodging the complaint. Had the real facts been discussed about the filing of the complaint before Sub Divisional Magistrate, Phagwara, the

impugned summoning order would not have been passed. In fact the order passed by the Sub Divisional Magistrate, Phagwara has indicted the complainant-respondent No.2 who specifically observed that the petitioner did not cause any injury to the complainant-respondent No.2 and further that he might sustained injuries after getting struck with something, as there was no light in the house.

Learned counsel for the petitioner further contends that first the complaint was dismissed in default on February 16, 2009 without getting the said complaint restored, he filed a fresh one which is not permissible under law.

On the other hand, learned State counsel assisted by learned counsel for respondent No.2 has submitted that there is no infirmity or illegality in the impugned order. The occurrence had taken place on September 03, 2005 at about 11.00 PM, in which, the respondent No.2 sustained injuries at the hands of the petitioner with an "iron sabbal". The injuries were caused by the petitioner with an intention to kill respondent No.2. However, he luckily escaped by running out of the room and saved by Dr. Arjan Singh and Dr. Onkar Singh. He was also rushed to the hospital for medical assistance by Dr. Arjan Singh and Dr. Onkar Singh. This fact is evident from the copy of MLR as well as the testimony of Dr. Arjan Singh, who appeared in the witness box. Moreover, injuries appearing on the person of respondent No.2 cannot be termed to be either self suffered or a result of friendly hands. Rather, the injuries were caused by the petitioner with an 'iron sabbal' with an intention to kill respondent No.2 and in such a situation, offence under Section 307 IPC is made out whereas, the petitioner has only been summoned by trial Court to face trial under Section 323 IPC. Moreover, on the basis of cogent and convincing

evidence, the complainant-respondent No.2 has been rightly summoned to face trial.

This Court has given an anxious thought to the submissions made by learned counsel for the parties and have perused the record available on file.

Undisputably, there is a matrimonial discord between the parties and both the daughters and a son are residing with the petitioner. The litigation is also going on between the husband and wife. As far as the occurrence dated September 03, 2005 at about 11.00 PM is concerned, the matter was reported to the police and on the basis of statement of respondent No.2, DDR No. 18, dated September 09, 2005 was registered. Subsequent thereto, he filed a regular complaint.

By now it is pretty settled that concealment of facts is a serious matter and even the party who conceals or withheld the material facts is not required to be heard on merits. In the instant case, respondent No.2 while filing the complaint has not disclosed the proceedings carried out by Sub Divisional Magistrate, Phagwara. After the registration of above-said DDR, petitioner was proceeded against under Section 107, 151 Cr.P.C. She was arrested and produced in the Court of Sub Divisional Magistrate, Phagwara where she was released on bail on furnishing personal/surety bonds. Those proceedings were finally disposed of vide order dated November 02, 2006. Respondent No.2 was well aware of those proceedings as well as the passing of order dated November 02, 2006 when he lodged the second complaint i.e complaint No.9 dated March 03, 2009 but did not intentionally disclose about it. In fact, after hearing learned counsel for the parties as well as going through the statements of witnesses as well as parties and other documents, Sub Divisional Magistrate, Phagwara came

to the conclusion that no occurrence as alleged by respondent No.2 had taken place. He has categorically concluded that Jatinder Kaur did not cause any injury to her husband and further that since there was no light in the house, Paramjit Singh might have fell down after getting struck with something and sustained injuries. Since there was specific observations recorded by Sub Divisional Magistrate, Phagwara while discharging the petitioner, the factum of those proceedings as well as order passed therein, has been concealed/withheld by respondent No.2/complainant while lodging the instant complaint. Such a person does not deserve to be heard even on merits. Had the order passed by Sub Divisional Magistrate, Phagwara while discharging the petitioner been disclosed in the complaint, the impugned summoning order would not have been passed.

In the light of what has been discussed above, this court is of the considered view that impugned order is not sustainable in the eyes of law and deserves to be set aside.

Accordingly, instant petition is allowed and order dated August 17, 2013 (Annexure P-1) is set aside. However, respondent No.2 is burdened with special cost to the tune of ₹25,000/-, which shall be paid by him to the petitioner.

AUGUST 11, 2016
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>