

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.862 of 2011 (O&M)

Date of decision: 12.01.2016

Balwant Rai

.....Petitioner

versus

Raj Kumar and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Ashwani Bhardwaj, Advocate for the petitioner
Mr.N.S.Shekhawat, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 15.3.2011, passed by the learned Additional Sessions Judge, Fatehabad, vide which, two separate revisions were filed by the accused against the summoning order dated 3.7.2009 were allowed and the complaint filed by the complainant was dismissed.

Complainant had filed a complaint before the learned Chief Judicial Magistrate, Fatehabad under Sections 307, 323, 506, 147, 148, 148 IPC on 3.9.2003 against the eight accused. The Magistrate recorded the evidence and ultimately it appears that matter was put up before learned Sub Divisional Judicial Magistrate, Ratia, who vide order dated 3.7.2009 passed the summoning order wherein

the accused were ordered to face the trial for commission of offence punishable under Sections 147, 148, 323, 307 read with Sections 149 and 506 IPC. The accused being aggrieved of the said order challenged the said order by way of revision, which was allowed vide order dated 15.3.2011.

The complainant is aggrieved of the order passed by the learned Additional Sessions Judge, Fatehabad.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the petitioner has argued that the ground on which the revision has been allowed is that the State case bearing FIR No.182 dated 12.4.2003 under Sections 307, 323, 324, 325, 353, 148, 149, 506 IPC was also registered regarding the same occurrence against the complainant and 37 other persons on the statement made by Raj Kumar -accused. Therefore, the complaint case and the State case should have been tried together under Section 210 Cr.P.C. It was held that in the State case the complainant and others have been convicted and sentenced vide order dated 6.3.2009. Therefore, the present complaint is nothing but misuse of the process of Court.

Before this Court, a copy of the judgment of the State case has been filed. It comes out that as per allegations levelled by the accused, there was a dispute regarding land. Present complainant was tenant in the disputed land. On 9.4.2003, the proceedings under Section 145 Cr.P.C. were initiated and receiver was appointed. Receiver took the possession of the land on

10.4.2003. On 11.4.2003, the present incident took place in the presence of the receiver, police officials and the accused party. By way of Civil Misc. application, a copy of the judgment of the criminal case has been produced which shows that the State case was committed to the Court of Sessions by the Chief Judicial Magistrate, Fatehabad vide his order dated 3.7.2003. 38 persons were tried for various offences, including Sections 307 and 353 IPC. Section 353 IPC was introduced on account of accused allegedly assaulting the receiver and the police officials. In this way, it is clear that the occurrence took place in the presence of the receiver as well as police officials. In the State case, it was stated that 50-60 persons assaulted the receiver, police officials and the present accused party. The occurrence took place in the disputed land. The perusal of the judgment of the State case shows that accused were given opportunity to lead defence evidence and there the version of the accused as given in the present complaint was considered. The evidence led in support of the said version was also considered. It was held that the present complainant and others were the aggressors and accordingly, 37 persons were convicted and sentenced.

The present complaint was filed on 3.7.2003, when apparently the State case was committed to the Court of Sessions. The preliminary evidence continued and ultimately summoning order was passed on 3.7.2009 i.e. after six years. In the meanwhile, the present complainant and others were convicted in the State case and on account of the exemption application filed before the lower Court, it

came to the notice of the lower Court that the complainant has been convicted in the State case. The learned Sub Divisional Judicial Magistrate, Ratia erred in not calling for the report of the police under Section 202 Cr.P.C., which was required in the present case. From the judgment of the State case, it comes out that the injuries received on the person of Amit and Raj Kumar were so serious that possibly they were not in a position to attack anybody. Even the gun shot fired by Amit Arora has been explained. Here, a large number of persons numbering 50-60 had attacked the receiver, police party and the accused. The occurrence took place in the presence of the police.

In these circumstances, even if it is held that the Magistrate should have taken recourse to Section 210 Cr.P.C., but did not do so, the fact remains that the present complaint is nothing but misuse of the process of Court. The version of the complainant has already been considered and decided after they were given opportunity of hearing.

In these circumstances, I am of the view that in addition to reasons given by the learned Additional Sessions Judge, Fatehabad, this Court is of the view that the present complaint is nothing but misuse of the process of the Court and therefore, it was rightly ordered to be dismissed.

The Hon'ble Supreme Court in Sirajul and others v. State of U.P. and another, 2015 STPL(Web) 1253 SC, in similar case while quashing the criminal complaint the proceedings under Section 307 IPC observed as under:-

“17. It is thus clear from the above observations that mere

delay in completion of proceedings may not be by itself a ground to quash proceedings where offences are serious, but the Court having regard to the conduct of the parties, nature of offence and the extent of delay in the facts and circumstances of a given case, quash the proceedings in exercise of jurisdiction under Section 482 Cr.P.C. in the interest of justice and to prevent abuse of process of the Court.

18. In the present case, conduct of the complainant can certainly be taken into account. Admittedly, the complainant stood convicted in a cross case. At least for ten years after commencement of the trial, the complainant did not even bother to seek simultaneous trial of the cross case, the step which was taken for the first time in the year 2005 which could certainly have been taken in the year 1995 itself when the trial against respondent No.2 commenced. Having regard to the nature of allegations and entirety of circumstances, it will be unfair and unjust to permit respondent No.2 to proceed with a complaint filed 16 years after the incident against the appellants.”

Here also, the complaint remained pending for six years.

No application is stated to have been moved by the complainant under Section 210 Cr.P.C. and only after conviction of the complainant and several other persons with respect to the same occurrence the summoning order was passed. Therefore, it is held to be misuse of the process of Court.

Therefore, for the reasons recorded above, I hold that the complaint was rightly dismissed. Consequently, the present revision is also dismissed.

12.01.2016

gk

**(Kuldip Singh)
Judge**