

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

132

Criminal Misc. No.M-7500 of 2016
Date of decision: 4th April, 2016

Sukhbir Singh and another

....Petitioners

versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. D.D. Singla, Advocate for the petitioners.

DAYA CHAUDHARY, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for quashing of criminal complaint No.19/15 dated 28.11.2014 titled as 'Soma Devi vs. Sukhbir Singh and others' under Sections 376/511/354/506 read with Section 34 of the Indian Penal Code (for short 'IPC') pending before Judicial Magistrate Ist Class, Pathankot (Annexure P-1) and summoning order dated 03.05.2015 (summoned only under Section 354/34 IPC while complaint under Section 376/511/34 IPC stands dismissed) **Annexure P-3**.

Learned counsel for the petitioners submits that summoning order dated 03.05.2016 (Annexure P-3) has been passed without any application of mind whereas there was no reason for involvement of the petitioners. Even no complaint was made before

the police authorities. The summoning order is totally non-speaking. Learned counsel also submits that the summoning order (Annexure P-3) is not to be passed in a mechanical manner unless some documents or evidence are there.

Heard arguments of learned counsel for the petitioners and have also perused the allegations levelled in the complaint as well as in the summoning order.

A perusal of the summoning order clearly shows that not only reasons have been recorded but a finding has also been given by learned Judicial Magistrate Ist Class, Pathankot. Initially, the complaint was filed under Sections 376/511/354/506 read with Section 34 IPC but subsequently, on finding a prima facie case, the summons were issued to the accused persons under Sections 354/34 IPC only. As per allegations in the complaint, at the most, it can be offence of assault. After considering the allegations made in the complaint as well as the statement of the complainant, the learned Judicial Magistrate Ist Class, Pathankot was of the view that it was not a case of offence under Section 376 IPC as only an attempt was made to commit rape. The accused have been summoned under Sections 354/34 IPC. The complaint under Sections 376/511/506 IPC was dismissed as no evidence came on record to proceed against the accused persons. A detailed discussion is there in the summoning order which shows that learned Magistrate has passed the summoning order after proper application of mind. Hence, it cannot be said in any manner that the summoning order is non-speaking and the summoning Court has not applied its mind. Learned Magistrate has to

form an opinion after considering the allegations and the statement made by complainant as to whether the offence is made out or not for summoning of the accused persons. In the present case, learned Magistrate came to the conclusion that a prima facie case under Sections 354/34 IPC is made out and the accused have been summoned for said offences.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioners and the petition being devoid of any merit is hereby dismissed.

April 04, 2016

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**(DAYA CHAUDHARY)
JUDGE**