

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

CRR No.1723 of 2016 (O&M)
Date of Decision: October 17, 2016

Anil Kumar and another

...Petitioners

VERSUS

Ram Narain

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

None for the respondent.

INDERJIT SINGH, J.

The present revision has been filed by the petitioners Anil Kumar and Chiter Rekha under Section 401 Cr.P.C. against respondent Ram Narain, challenging the impugned judgment dated 05.02.2016 passed by learned Addl. Sessions Judge, Panchkula, vide which the revision filed by the complainant-respondent was allowed and the order dated 05.05.2015 passed by learned Judicial Magistrate Ist Class, Panchkula, dismissing the complaint filed by the complainant-respondent, was set aside.

Notice of motion was issued but none appeared on behalf of respondent despite service.

I have heard learned counsel for the petitioners and have gone through the record.

From the record, I find that Ram Narain filed a complaint against Anil Kumar and Chiter Rekha under Sections 323, 452 and 506 IPC read with Section 34 IPC.

The brief facts as noted down in the order dated 05.05.2015

passed by learned JMIC, Kalka, are as under:-

2. The facts put forth by the complainant are that the accused no.1 is his son and the accused no.2 is his daughter-in-law. After the marriage of the accused persons, the accused no.1 along with the accused no.2 had shifted to the house of his in-laws. In the year 1994, he had purchased a plot in the name of his wife, after which, he had constructed a house over there. In February 2009, his wife had expired, after which, the accused persons had started residing with him. Thereafter, the accused persons had started harassing him and his other son, and had also given beatings to them. On 26.01.2015 at about 10.00 p.m., the accused no.1 had started abusing them and had given beatings to his other son and his family members. The accused persons had also given beatings to him, after which, he left his house. The accused no.1 had also threatened the complainant that if he would enter the house, he would kill him.”

In the preliminary evidence, the complainant examined himself as CW-1. Thereafter, the matter was referred for investigation under Section 202 Cr.P.C. Learned Magistrate after going through the evidence, dismissed the complaint vide order dated 05.05.2015. A revision was filed and learned Addl. Sessions Judge, Panchkula, vide impugned judgment dated 05.02.2016 allowed the revision petition and set aside the order dated 05.05.2015.

Aggrieved from the impugned judgment dated 05.02.2016 passed by learned Addl. Sessions Judge, Panchkula, present revision petition has been filed by the petitioners.

The perusal of the record shows that firstly it is a case of the complainant that accused persons had started harassing him and his other son and have also given beatings to them. It is specifically stated that on 26.01.2015 at about 10.00 P.M., accused No.1 started abusing them and had given beatings to complainant's other son and his family members. Neither the other son nor any family member has come to depose in preliminary

evidence that beating was given to them. Only the complainant has come to the witness box and there is no corroboration to his evidence. Neither MLR has been placed on the record nor any doctor has been got examined nor any other witness has been examined. The report under Section 202 Cr.P.C., which was also received by the Court, is also against the complainant. In the report, it is stated by the police that complainant has filed the present complaint to evict the accused persons from the house. The complainant has levelled false allegations against the accused persons. The Court held that there is no reason to discard the police report. The findings given by learned JMIC, Kalka, are correct, as per evidence and law.

The findings given by learned Addl. Sessions Judge, Panchkula, setting aside the order dated 05.05.2015 passed by learned JMIC, Kalka, are not as per law. The perusal of the police report shows that report was given after joining the complainant and respondents and after recording their statements. In the report dated 24.04.2014 Annexure P-1 given by the SHO, Pinjore, it is written that ownership of the house is in the name of wife of the complainant and Anil Kumar. The complainant wish to put pressure on the respondents (present petitioners) by moving complaints again and again, so that on getting disturbed from the repeated complaints, they could vacate the house. It is specifically written that allegations of beatings and harassment levelled in the complaint are false and baseless. The dispute is regarding the property of both the parties. It is also in the report that all the allegations levelled in the complaint are false and baseless.

Learned Addl. Sessions Judge, Panchkula, while setting aside

the order dated 05.05.2015, has stated that only statement of the accused has

been recorded by the police.

The summoning of an accused at the summoning stage is a serious matter. The summoning order cannot be passed in a mechanical way. The Court is to see whether there are sufficient grounds to proceed further in the complaint or not. The perusal of the record shows that there were no sufficient grounds to proceed further in the complaint. There is property dispute between the parties and as per the police report (Annexure P-1), the house is registered in the name of Anil Kumar and his mother. The complainant is not the owner of the house as per the police investigation.

Furthermore, there is no corroboration to the statement of the complainant. No medical evidence is there nor the other son and any family member came to support the complainant. Therefore, only on the oral statement of the complainant in these circumstances, the accused-petitioners cannot be summoned and it cannot be held that there are sufficient grounds to proceed against the accused.

In view of the above discussion, I find that the impugned judgment dated 05.02.2016 passed by learned Addl. Sessions Judge, Panchkula, setting aside the well-reasoned order dated 05.05.2015, is illegal and not as per law and the same is set aside.

Therefore, finding merit in the present revision petition, the same is allowed. The order dated 05.05.2015 passed by learned JMJC, Kalka, dismissing the complaint is correct, as per law and the same is upheld.

October 17, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No