

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

CRM-M-17726 of 2014

Date of Decision: 06 November, 2017

Vinay @ Kalkati and another

..Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. M.S. Kathuria, Advocate
for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

Ms. Manpreet Kaur, Advocate
for Mr. Chander Hans, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

The short point involved in this petition under Section 482 Cr.P.C, whereby, petitioners Viany @ Kalkati and Sonu have assailed the orders of learned Additional Sessions Judge, Jhajjar, dated 27.05.2013 whereby, it has set aside earlier orders of learned Additional Chief Judicial Magistrate, Jhajjar dated 23.05.2012, thereby, dismissing the complaint of the complainant Jaivinder-respondent No.2. before this Court but the same was set aside by the learned Additional Sessions Judge, Jhajjar, vide impugned orders dated 27.05.2013 and the following directions were issued:-

“ _ _ _ However, it is made clear that nothing expressed herein above shall effect the merits of the case, in any manner and the Trial Magistrate will appreciate the evidence on record at the time of arguments on charge. Complainant is directed to appear before the trial Magistrate on 03.06.2013 for further proceedings of the

case. Copy of this order along with the trial Court record be sent back to the concerned court. Revision file be consigned to record room after due compliance.”

It is these very directions which are sought to be assailed.

Upon hearing learned counsel for the parties and perusing the records of the case. The brief facts that need to be highlighted are that complainant Jaivinder filed a complaint against accused-petitioners that on 16.9.2007 around 8 p.m. while complainant was coming back to his house, the accused were coming on a motorcycle armed with stick and iron rod and passed sarcastic remarks against the complainant and assaulted him with their weapons hitting him on the left side of the head, left eye and nose and when nothing transpired led to the filing of the complaint, which was dismissed by the learned Magistrate but reversed by the learned Additional Sessions Judge.

The precise point in this revision is the very exercise of powers under Sections 397 and 398 Cr.P.C and which provisions are reproduced as follows to lay emphasis:-

397 Calling for records to exercise powers of revision:- (1)“

The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.”

A plain reading of these statutory provisions makes it abundantly clear that in exercise of its revisional powers the Court of learned Sessions Judge to satisfy himself as to the correctness, legality or propriety of any sentence or order recorded or passed and as to the regularity of any proceedings of any inferior Court may when calling for such record pass an order as it may deem fit. Thus, abundantly makes it clear that it is the very legality or propriety of the findings which needs to be gone into. A close look at the impugned orders certainly shows that there are accusation of physical assault by the accused/petitioners and which is well corroborated by medical evidence to which the learned Magistrate has failed to take notice and cognizance and has gone astray which resulted in miscarriage of justice. In the impugned orders, learned Additional Sessions Judge after appreciating the oral as well as documentary evidence has held that evidence of CW1 to CW3 was fully materially corroborated by the medical evidence of CW4 who has proved medico legal report of the injured and, thus, to that effect even neither learned counsel for the complainant nor learned State counsel disputed the findings in any manner. Certainly as is canvassed by the learned counsel for the petitioner and is the sole point which has been raised by the learned counsel for the petitioner the directions issued by the Revisional Court directing the complainant to appear before the Magistrate and trial Court has been directed to appreciate evidence on the record at the time of arguments on charge. Certainly such a direction was highly uncalled for and Court was only supposed to apply litmus test of legality and propriety of the findings and had it come to that conclusion it could have simply set aside the order and could not have over reached by issuing directions to

that effect and which is certainly excess misuse of revisional jurisdiction.

Thus, in the light of what has been detailed and discussed above, certainly the impugned orders to that extent are illegal and wrong. Thus, the present petition is partly allowed to that limited extent, thereby, setting aside these directions, however, remaining part of the impugned findings are fully in consonance with law and needs to be upheld.

The petition stands partly allowed to that limited extent.

06 November, 2017

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(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No