

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

CRM-M-21996-2012

Date of decision-10.03.2017

Harwinder Singh Khaira

...Petitioner

Vs.

Jagtar Singh and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Parminder Singh-I, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

None for the complainant.

JITENDRA CHAUHAN, J. (Oral)

The present petition has been filed under Section 482 of the Criminal Procedure Code (in short Cr.P.C) for quashing of the complaint No.180 dated 17.10.2007 titled as "Jagtar Singh Vs. Jaswant Singh and others" registered under Sections 307, 452, 323, 324, 325, 382, 341, 506 and 295-A read with Section 34 of Indian Penal Code (in short 'IPC') and summoning order dated 02.01.2012 (Annexure P-2) passed by Sub-Divisional Judicial Magistrate, Sunam.

Learned counsel for the petitioner submits that the petitioner was posted as SHO, Moonak as on 25.09.2007 i.e. the date of alleged incident. The petitioner had initiated proceedings under Sections 107 and 151 Cr.P.C. against the complainant and the other party, who are real brothers considering their conduct and in order to maintain law and order and to ensure that peace prevails. Both the parties were produced before the

SDM on the same day under Sections 107 and 151 Cr.P.C. and thus the petitioner had acted in exercise his power in accordance with law. He further contends that the learned trial Court has not appreciated the provision of Section 197 Cr.P.C which stipulates that a public servant acting in discharge of his official duty cannot be prosecuted without the prior sanction from the competent authority. In support of this contention, he cites “*Gian Parkash Vs. State of Haryana, 2008 (3) R.C.R.(Criminal) 31*”. Lastly, he contends that the petitioner has been falsely implicated in the complaint and no offence, as alleged, is made out against him.

On the other hand, learned counsel for the State supports the complaint and summoning order in question.

I have learned counsel for the parties and have gone through the case file.

Complainant/respondent No.1 had filed a complaint against the petitioner and three other persons, who are real brothers of the complainant, alleging therein that his brothers had inflicted injuries to his wife due to a dispute regarding partition of property. It is alleged that when the complainant approached the petitioner for redressal of his grouse, the petitioner abused him, beat him up, illegally confined him in the lock up and then produced him before the SDM in a false case under Sections 107 and 151 Cr.P.C.

Considering the fact that the dispute is inter se the brothers with regard to share in the property, it appears that the petitioner has been unnecessarily implicated in the complaint merely for initiating the

proceedings under Sections 107 and 151 Cr.P.C. in discharging of his official duty and even from the perusal of the complaint, ingredients of Sections 341 and 506 of IPC are prima facie not made out. The petitioner has been summoned without there being any material on record and without considering the provisions of Section 197 Cr.P.C.

In view of the above, present petition is allowed.

(JITENDRA CHAUHAN)
JUDGE

March 10, 2017
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No