

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.M-2051 of 2017(O&M)

Date of Decision: February 15, 2017

Kaliram & othersPetitioners

Versus

State of Haryana and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.HS Ghuman, Advocate for the petitioners.

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TEJINDER SINGH DHINDSA, J.

CRM No.3933 of 2017

Application allowed as prayed for. Copy of the complaint dated 28.8.2012 is taken on record at Annexure P13.

2. Application stands disposed of.

Main case

3. The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking the setting aside of summoning order dated 2.8.2016, Annexure P1, passed by the learned Judicial Magistrate Ist Class, Jhajjar and whereby the petitioners have been summoned to face trial under Sections 148, 149, 323 and 506 of the Indian Penal Code. Further challenge is to the order dated 16.11.2016, Annexure P2, whereby a revision petition filed by the petitioners against the summoning order has been dismissed by the learned Additional Sessions Judge, Jhajjar.

4. Learned counsel states that it is a case of false implication. It is submitted that in a scuffle that took place on

27.5.2012 even the petitioners' side had suffered injuries and just to gain an upper hand pertaining to a dispute which was essentially civil in nature, the complaint has been filed. It has also been argued that the complaint lodged by respondent No.2 is ill-motivated and an attempt has been made to rope in the entire family of petitioner No.1. Learned counsel submits that petitioner No.2 is serving in the Indian Army and petitioner No.3 stands selected as an Income Tax Officer with the Income Tax Department and the complainant being aware of such position has deliberately arrayed them as accused in the complaint with malafide intent.

5. Learned counsel for the petitioners has been heard and the pleadings on record have been perused.

6. Perusal of the complaint dated 28.8.2012 at Annexure P13 discloses that on 22.5.2012, the complainant and his family had lifted soil from their fields so as to level a path. This was objected to by the accused-party. On the following day at about 4.00/5.00 p.m., the complainant lodged a protest and upon which the accused-party had threatened to kill him and his family members. It was asserted that on 27.5.2012 at about 6.00 p.m. when the complainant and his father Abhey Ram and brother Rajbir were working in the fields, then the accused-party with a common intention attacked the complainant. Harbir is alleged to have hit the complainant with a brick on his left temporal region. Bhupinder (petitioner No.2 herein) was stated to be armed with an axe and inflicted an axe blow above the left eye, Kali Ram (petitioner No.1 herein) allegedly pinned down the complainant

and Parvinder and Deepak (petitioners No.3 and 4 herein) gave kick and fist blows.

7. The impugned summoning order dated 2.8.2016 passed by the Judicial Magistrate It Class, Jhajjar is placed on record at Annexure P1. The complainant stepped into the witness box as CW1 and also examined CW2 Yogesh, CW3 Jai Bhagwan, CW4 Rajbir and CW5 Dr.Sandeep Chaudhary. Such witnesses have corroborated the version as set out by respondent No.2 in the complaint.

8. CW5 Dr.Sandeep Chaudhary has testified that on 27.5.2012 he was posted at CHC Dighal as Medical Officer and on that day he had medicolegally examined Ram Roop son of Abhay Ram. He had found the following injuries upon him:

"1. A lacerated wound of size 1.5 x 1.0 cm on left temporal region about 7.0 cm from left ear. Advised X-ray skull and CT head.

2. A lacerated wound of size 0.5 x 1.0 cm on lateral end of left eyebrow.

3. A swelling of size 2.0 x 4.0 cm under right eye.

4. Fresh bleeding coming from left ear."

9. The MLR of the complainant was produced as Exhibit CW6-A.

10. On the basis of the testimony of CW1 to CW5 as also MLR CW6-A, the Magistrate has formed an opinion as regards prima facie case having been made out for summoning the petitioners herein under Sections 148, 149, 323 and 506 of the Indian Penal Code.

11. The summoning order stands affirmed even by the revisional Court.

12. It is by now well settled that the Magistrate has to see whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant conviction. This Court would intervene in the summoning order only where the allegations made in the complaint or the statement of witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or where the complaint does not disclose the essential ingredients of an offence which is alleged against the accused. A summoning order may also be set aside where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can even reach a conclusion that there is sufficient ground for proceeding against the accused.

13. In the facts of the present case, learned counsel has not been able to demonstrate that the impugned summoning order falls within the parameters noticed hereinabove so as to warrant interference in the same.

14. No merit. Dismissed.

February 15, 2017

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether speaking/reasoned?* *Yes/No*
 Whether Reportable? *Yes/No*