

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

CRM-M-23672 of 2015

Date of Decision: March 08, 2017

Suresh and another

...Petitioners

Versus

Dr. Virender Arya and another

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Aditya Sanghi, Advocate
for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

The case has a chequered history when initially a complaint in writing was moved by the complainant Dr. Virender Arya against Suresh and Ramesh before the Police Station, City Narnaul leading to registration of FIR No.224 dated 26.09.2004 under Sections 148,149,452,506,427 IPC and it is thereupon during the course of investigations, it came to light that the accused side on 24.08.2004 had broken the wall of the complainant's premises, as a consequence of which, water entered in compound of his house damaging his house and, thus, claimed to have suffered damages. It is alleged that accused were supported by 6-8 persons all armed with various weapons comprising of iron rod etc. entered into the house of the petitioner and threatened him and his wife. In the evidence before the Court after the police held the accused innocent and on his protest petition has examined complainant as PW1, his wife Manju

Arya as PW2 and one Madhu Sudhan as PW3. The Court of learned Chief Judicial Magistrate, Narnaul vide orders dated 05.09.2011 held that no prima facie case was made out against the accused and, thus, dismissed the complaint. It is against this very findings the petitioner knocked at the doors of learned Additional Sessions Judge, Narnaul who vide impugned orders dated 16.04.2015 dismissed his criminal revision upholding the order of the trial Court. However, directing the trial Court to re-consider the entire evidence afresh and pass an appropriate order in accordance with law. The same is subject matter of agitation before this Court.

Upon hearing learned counsel for the parties and perusing the records of the case. It is much in abundance reflected from the impugned orders and the records that the learned Additional Sessions Judge at no point of time ever bothered to issue notice to the respondents while entertaining the revision till its disposal and had gone about unilaterally disposing the matter after hearing the petitioner-complainant side and, thus, has certainly committed a grave illegality going to the very roots of the impugned findings. Thus, this Court seek support from law laid down in **(2012) 10 Supreme Court Cases 517 Manharibhai Muljibhai Kakadia and another vs. Shaileshbhai Mohanbhai Patel and others** where the Hon'ble Apex Court while elaborating the provisions of Sections 401(2) Cr.P.C held that once a party arraigned as a respondent it is the bounden duty of the Court before passing an order in the absence of the respondent side/accused in the present case to have ensured that they too ought to be given opportunity of hearing and, thus, to the mind of this Court by the impugned findings the learned Revisional Court has caused immense prejudice to the case of the respondents/accused as no order could have been passed at their

back without affording them an ample opportunity of being heard. In the light of the same and the fact that there is total non-application of mind by the Court below going to the very roots of the case and, therefore, the very legality and impropriety of these findings are put to doubt impels this Court to accept the instant petition and set aside and quash the impugned orders dated 16.04.2015 Annexure P/1 passed by the learned Additional Sessions Judge, Narnaul. The case is remanded back to the learned Additional Sessions Judge, Narnaul to afford an opportunity to the respondents/present petitioners after issuing them notices to rehear the matter and pass an appropriate order afresh.

(FATEH DEEP SINGH)
JUDGE

Match 08, 2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No