

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

CRM-M-26448 of 2017.
Decided on:-July 26, 2017.

Umrao Singh.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Shashi Kant Gupta, Advocate
 for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.P.C. for quashing of impugned judgment dated 18.04.2017 (Annexure P-3) passed by learned Additional Sessions Judge, Narnaul, whereby the revision petition filed by respondents No.2 to 4, namely, Haripal, Suresh alias Sushia and Birender alias Phoni Pahalwan was allowed and the summoning order dated 25.09.2015 passed by learned Sub-Divisional Judicial Magistrate, Mahendergarh against respondents No.2 to 4 qua Section 436 IPC, was set aside.

Briefly stated, the petitioner-complainant had filed a complaint under Sections 147, 148, 323, 325, 427, 436, 452, 120-B, 217 and 218 IPC against respondent No.2 and other co-accused with the allegations that on 18.05.2011 at about 8.00 P.M., when the complainant and his wife Murti Devi

were present at their house and were cutting fodder for animals, respondents No.2 to 4 along with other co-accused accompanied by 7-8 persons armed with Lathi, Danda and Jaily trespassed into their house and started dismantling buffalo tin-shed and gate. When the complainant and his wife raised objection, the accused persons became furious and started hurling abuses to them. They also started manhandling the complainant and his wife. Respondent No.2-accused Haripal inflicted a Jaily blow on the right shoulder of the complainant, whereas respondent No.3-accused Suresh @ Susia pelted brick blow on his right knee. Respondent No.4-accused Birender @ Phoni Pahalwan inflicted a Danda blow on the right ear and shoulder of the complainant. When Murti Devi tried to rescue the complainant, accused Surender caused injuries upon her. Respondents No.2 to 4 also caused injuries on various parts of her body with their respective weapons. The accused persons completely dismantled tin-shed and gate of his house. Thereafter, the complainant, his wife, daughter-in-law, two grand-daughters and grandsons somehow escaped from the clutches of the accused and went to Police Station Mahendergarh, but the police refused to register the FIR and directed them first to go to a hospital for medical examination. Ravi son of Madu Ram took them to the hospital.

It has further been alleged that respondents No.2 to 4 along with other co-accused again came to the house of complainant at 11.30 P.M. and set on fire the tin-shed, where fodder was stored after sprinkling kerosene on it. The whole occurrence was witnessed by Sanjay son of the complainant and Surajbhan. After receiving information regarding setting the tin-shed on fire, from his son Sanjay, the complainant asked the police officials of Police

Station Mahendergarh to send a fire-brigade on which, a fire-brigade vehicle came at the spot and put out the fire.

On the basis of application moved by the complainant, an FIR No.190 dated 21.05.2011 was registered under Sections 323 and 325 read with Section 34 IPC at Police Station Mahendergarh, but the offence under Sections 147, 148, 436 and 452 IPC were not mentioned by the police.

After recording the preliminary evidence and hearing arguments of the counsel for the complainant, learned Sub-Divisional Judicial Magistrate, Mahendergarh, vide order dated 25.09.2015 summoned respondents No.2 to 4 and other co-accused, namely, Rampal only to face trial under Sections 323, 325, 427, 436 and 452 read with Section 34 IPC.

Aggrieved against the aforesaid summoning order dated 25.09.2015 passed by learned Magistrate, respondents No.2 to 4 filed a revision petition before the Court of Session. Vide judgment dated 18.04.2017 passed by learned Additional Sessions Judge, Narnaul, the said revision petition was allowed and the summoning order dated 25.09.2015 passed against respondents No.2 to 4 qua Section 436 IPC was set aside.

It is in these circumstances, the petitioner-complainant has filed the present petition challenging the judgment dated 18.04.2017 passed by learned Additional Sessions Judge, Narnaul.

Learned counsel for the petitioner-complainant has argued that vide order dated 25.09.2015, respondents No.2 to 4 and other co-accused, namely, Rampal were rightly summoned by learned Sub-Divisional Judicial Magistrate, Mahendergarh, but learned Additional Sessions Judge, Narnaul has not properly considered the statement of petitioner as well as other

witnesses. The respondents No.2 to 4 along with other co-accused not only caused injuries to the complainant and his wife with deadly weapons, but also set on fire their tin-shed by sprinkling kerosene on it. However, vide impugned judgment dated 18.04.2017, learned Additional Sessions Judge, Narnaul has wrongly allowed the revision petition filed by respondents No.2 to 4.

I have heard learned counsel for the petitioner-complainant.

Perusal of impugned judgment dated 18.04.2017 passed by learned Additional Sessions Judge, Narnaul reveals that it has been alleged by the petitioner-complainant that the accused persons had set on fire the tin-shed behind his back, meaning thereby, the complainant had not seen the accused ablazing the tin-shed. Even his wife Murti Devi admitted in her cross-examination that they did not witness ablazing the tin-shed at the hands of the accused as they were admitted in the hospital. Another witness of the complainant, namely, Surajbhan has given a contradictory statement in his affidavit Ex.PW6/A, wherein he has alleged that accused Suresh and Poni Pahalwan had set on fire the tin-shed of complainant, but in his statement, this witness has named Sanjay setting fire to the Chhappar (tin-shed). However, there is no accused named Sanjay.

In these facts and circumstances, learned Additional Sessions Judge, Narnaul has rightly observed that no offence under Section 436 IPC is made out against the respondents No.2 to 4 and, accordingly, set aside the summoning order dated 25.09.2017 passed by learned Sub Divisional Judicial Magistrate, Mahendergarh qua Section 436 IPC. Thus, there is no illegality in

the impugned judgment dated 18.04.2017 passed by learned Additional Sessions Judge, Narnaul.

In view of the above, this Court finds that there is no merit in the present petition and the same is, accordingly, dismissed.

July 26, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No