

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

CRM-M-26456 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 order dated 19.09.2016 passed by learned Judicial Magistrate 1st Class, Mahendergarh vide which the application under Section 216 Cr.P.C. filed by the prosecution was dismissed.

Challenge has also been laid to the impugned judgment dated 18.04.2017 (Annexure P-3) passed by learned Additional Sessions Judge, Narnaul, whereby the revision petition filed by the petitioner against the aforesaid order dated 19.09.2016 passed by learned Magistrate, was dismissed.

The respondents No.2 to 4 are facing trial before learned Judicial Magistrate 1st Class, Mahendergarh in case FIR No.190 dated 21.05.2011 under Sections 323 and 325 read with Section 34 IPC registered at Police

Station Mahendergarh. During trial, an application under Section 216 Cr.P.C. was filed by the prosecution for amendment of charge. It has been alleged in the said application that the present case was investigated by the DSP, Headquarter on 28.05.2011 and the Additional S.P. Ombir on 23.07.2012 and the allegations levelled against the accused were found to be true. Sample of dry fodder was sent to FSL, Madhuban, but the S.P., Narnaul in collusion with the accused had dropped Sections 452, 436 and 427 IPC. Even Hari Singh official witness had effected the recovery of the half burnt dry fodder and PW7 Photographer had clicked the photographs at the spot. The incident was also witnessed by the eye-witnesses and as such, there is sufficient material on record to frame the charge under the aforementioned Sections against the accused (respondents No.2 to 4 herein).

After hearing arguments of both the sides, learned Judicial Magistrate 1st Class, Mahendergarh dismissed the application under Section 216 Cr.P.C. vide impugned order dated 19.09.2016.

Aggrieved against the aforesaid order dated 19.09.2016 passed by learned Magistrate, the petitioner had preferred a revision petition before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Narnaul vide impugned judgment dated 18.04.2017.

It is in these circumstances, the petitioner-complainant has approached this Court by way of present petition.

Learned counsel for the petitioner-complainant has argued that though there was sufficient material available against the respondents No.2 to 4 to charge them under Sections 452, 436 and 427 IPC, but learned Courts below have not properly considered the statement of petitioner-complainant

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. As such, the impugned order dated 19.09.2016 passed by learned trial Court as well as the judgment dated 18.04.2017 passed by learned revisionary Court are against facts, contrary to law and are liable to be set aside.

I have heard learned counsel for the petitioner-complainant.

Perusal of impugned order dated 19.09.2016 passed by learned trial Court reveals that it has been stated by the petitioner-complainant in his statement Ex.PW2/A 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 trial Court has rightly dismissed the application under Section 216 Cr.P.C. for amendment of charge. Thus, there is no illegality in the impugned order dated 19.09.2016 passed by learned Judicial Magistrate 1st Class, Mahendergarh and the same has rightly been affirmed by learned Additional Sessions Judge, Narnaul vide judgment dated 18.04.2017.

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