

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-38747 of 2016

Date of Decision: 14.11.2017

Santosh Devi & another

...Petitioner(s)

Versus

Kaushiya Devi

...Respondent(s)

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

Present:- Mr. Vishal Yadav, Advocate
for the petitioners.

Mr. Pradyuman Yadav, Advocate
for the respondent.

HARI PAL VERMA, J. (Oral)

Through the instant petition filed under Section 482 Cr.P.C., the petitioners have impugned the order dated 12.10.2015 passed by learned Additional Sessions Judge, Rewari, whereby the criminal revision filed by the respondent-complainant against the order dated 24.04.2012 passed by the trial Court was allowed and the case was remanded back to the trial Court for deciding the matter afresh in the light of observations made in the impugned order.

Learned counsel for the petitioners has argued that the respondent-complainant had filed a criminal complaint under Sections

323, 324 and 506 read with Section 34 IPC against the petitioners. The said complaint was dismissed by learned Judicial Magistrate Ist Class, Rewari vide order dated 24.04.2012 with the following observations:-

“Thus, the version of the complainant regarding injury being caused on the thumb of her right hand by Santosh and giving kick fist blows being given by Santosh and Surender does not inspire confidence. As per PW1 and PW2 Sunder gave an injury with Daranti on the left hand side of his head. No other injury to Satish has been explained or attributed to any one. The said Satish received three injuries. As is clear from the copy of MLR Ex.PW4/C. The entire version of the complainant does not explain the two more injuries suffered by Satish. Thus, it is clear that complainant is telling the half truth and not disclosing as to how the two other injuries were suffered by said Satish. The complainant has failed to make out a prima facie case for summoning the accused for commission of offences punishable under Sections 323 and 506 read with Section 34 of IPC. Hence, the present complaint is hereby dismissed. File be consigned to the record room after due compliance.”

The aforesaid order dated 24.04.2012 was made subject matter of challenge by the respondent-complainant by way of criminal revision. Learned revisionary Court accepted the criminal revision petition by observing as under:-

“9. From the oral evidence led on file by the complainant which stand corroborated from the medical

evidence, there are sufficient grounds for proceeding against the respondents-accused under section 323 read with section 34 IPC. The filing of the complaint after a period of about five months of the alleged occurrence by itself is also not sufficient to discard the statements made by the revisionist-complainant and her son. The filing of the present complaint after registration of the FIR against them would also not make any difference. The observations made by the learned trial Magistrate to the effect that the complainant is telling half truth and has not disclosed as to how the injuries were sustained by her son Satish Kumar thus cannot be accepted. As already observed, at this stage the Magistrate is only to see as to whether there are sufficient grounds for proceeding with the matter and not as to whether there are sufficient grounds for conviction of the accused.

10. In view of the observations made above, the order dated 24.4.2012 passed by learned Judicial Magistrate Ist Class, Rewari is set aside. Consequently, the present revision is allowed. The case is remanded back to the learned trial Court i.e. the successor court of Shri Lokesh Gupta, the then JMIC, Rewari for deciding the matter afresh in the light of the observations made hereinabove in this judgment after giving reasonable opportunity of hearing to the complainant and his counsel and then proceed further with the trial in accordance with law. The revision stand disposed of accordingly. The lower court record along with copy of this judgment be sent to the successor court of Shri Lokesh Gupta, the then Judicial Magistrate Ist Class, Rewari. The revisionist is directed to appear before the learned trial court on 21.10.2015. File

of the revision petition be consigned to record room after due compliance.”

Aggrieved from the judgment dated 12.10.2015 passed by learned Additional Sessions Judge, Rewari, the petitioners have filed the present petition.

Learned counsel for the petitioners has argued that through the impugned order dated 12.10.2015, the petitioners have been summoned in the case without there being any notice issued to them and therefore, the case of the petitioners is covered by ratio of law laid down by this Court in **Manharibhai Muljibhai Kakadia and anr. Vs. Shaileshbhai Mohanbhai Patel & ors. 2012(4) RCR (Criminal) 689.** He further submits that because of the impugned order, the trial Court has no option but to summon the petitioners.

On the other hand, learned counsel for the respondent has argued that vide order dated 12.10.2015, learned revisionary Court has just remanded the matter to the trial Court to decide it afresh and therefore, no notice was required to be given to the petitioners. He further states that even otherwise, the order dated 12.10.2015 can only be challenged by way of revision petition and not by way of a petition under Section 482 CrPC, as there is a specific provision under Section 401 CrPC.

I have heard learned counsel for the parties.

So far as the argument raised by learned counsel for the

petitioners that the petitioners have been summoned without there

being any notice to them, this Court finds that the arguments carries weight. Learned Additional Sessions Judge no doubt has remanded the matter back to trial Court to decide it afresh, but the said order has to be read in the light of para 9 of the judgment, as reproduced above, wherein learned Additional Sessions Judge has satisfied himself that there are sufficient grounds to proceed against the petitioners under Sections 323/34 IPC. Thus, once the revisionary Court has observed that there is evidence against the petitioners-accused to proceed against them, it is incumbent upon the trial Court to issue notice to them before summoning. Therefore, the right of the petitioners has been affected and the impugned order has resulted in causing prejudice to them.

Therefore, the present petition is disposed of with an observation that the trial Court shall act independently in accordance with law and shall not be influenced by the observations made by the revisionary Court.

November 14, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No