

233.

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

CRM-M-41527-2014 (O&M)

Date of decision:19.07.2017

GURBAX SINGH

... Petitioner

versus

AMIT & ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Rahul Dev, Advocate,
for the respondents.

HARI PAL VERMA, J.

Through the instant petition filed under Section 482 Cr.P.C., the petitioner-complainant Gurbax Singh has impugned the judgment dated 04.09.2014 passed by learned Additional Sessions Judge, Kaithal, whereby the order dated 21.08.2012 passed by learned Judicial Magistrate Ist Class, Kaithal, was set aside qua the respondent (accused)-Amit and the revision petition was allowed to the extent of summoning the accused i.e. Amit.

Briefly stated, the petitioner-complainant (herein referred as 'complainant') filed a complaint under Sections 323, 325, 427, 407, 191, 192, 159, 148, 149, 504, 506, 341, 218, 219, 136, 120-B IPC and Section 25 of Arms Act, 1959. As per the complaint, on 28.12.2007 at about 10.00 AM, when the complainant was sitting in his house in

Village Fatehpur along with one Darshan Singh on their cot in the street, at that time, the accused Amit, Sanjay, Mannu and Vicky were playing cricket in the street/chowk. The complainant asked them not to play cricket in the street, as it may cause injury to the complainant and others. On this, a hot altercation took place and injuries were caused to the complainant by these accused. The accused acted on the instigation of one Lajpat (accused No.6-Sarpanch of the village). The complainant was rescued by his wife-Malkit Kaur and one Darshan, and was threatened by the accused with dire consequences. In this respect, a complaint was moved by the complainant to the Police Station Pundri. The complainant got himself medically examined, but no action was taken by the police as the accused were influential persons and the then In-charge, Police Post, namely, Ram Chander (accused No.10) was hand-in-glove with the accused persons. With these allegations, a complaint was filed for summoning all the accused and to try them.

The complaint was dismissed by the learned Judicial Magistrate Ist Class, Kaithal, vide order dated 21.08.2012, as the complainant did not examine himself in support of his averments made in the complaint. Even as per the statement of CW1-Dr. S.S. Dahiya, at the time when the complainant was medico legally examined, smell of alcohol was found present from his mouth. Further, as per report under Section 202 Cr.P.C. on the relevant date i.e. 28.12.2007, the complainant and his sons caused injury to Amit and the matter was compromised between the parties. The complainant was found lying in

a drunken condition and the alleged injuries might have been suffered by the complainant on account of falling on a hard surface. Further, during the investigation of the case, the allegations levelled in the complaint were found false and baseless. The trial Court found that the evidence produced was not sufficient enough to summon the accused as summoning of accused in a criminal offence is a serious matter and criminal law can not be set into motion in a casual/routine manner. Accordingly, vide order dated 21.08.2012, the learned Magistrate dismissed the complaint as he did not find any substance to issue process against the accused.

The said order dated 21.08.2012 dismissing the complaint, was challenged by the petitioner by way of revision petition before the learned Additional Sessions Judge, Kaithal. As per the complainant, all the accused came to the spot and the accused-Amit gave a danda blow on the left arm of the complainant. The complainant did not appear in the witness box in the preliminary evidence, however, his wife Malkit Kaur, who is an eyewitness, was examined as CW3. She alleged that Amit gave a lathi blow on the arm of Gurbax, due to which, the arm of the complainant was fractured. She had not attributed any act to any other accused. CW1-Dr. S.S.Dahiya, who conducted the medico legal examination, proved the fractures of both bones of left arm of the complainant. Therefore, on the basis of statement of the eyewitness (Malkit Kaur) and on the medical evidence, the learned Additional Sessions Judge, while maintaining the revision petition, set aside the

order dated 21.08.2012 whereby the summoning of accused-Amit was declined. Thus, vide order dated 04.09.2014, the revision petition was allowed to the extent of summoning of the accused-Amit only.

It is against the aforesaid order dated 04.09.2014, the petitioner has filed the present petition under Section 482 Cr.P.C. seeking quashing of the order dated 21.08.2012 passed by learned Judicial Magistrate Ist Class, Kaithal and order dated 04.09.2014 passed by learned Additional Sessions Judge, Kaithal.

Learned counsel for the petitioner has argued that the above orders are not sustainable. The police has favoured the accused and the statement of the petitioner was not recorded by the police. All the accused were required to be summoned. The I.O. has not conducted any enquiry despite the fact that the complainant has moved many applications to senior police officers and no reason has been given for not summoning the accused-respondents despite the fact that the doctor in his MLR report stated that the complainant had not taken any liquor as alleged by the police. On the basis of averments made in the complaint, it was a fit case for summoning all the accused and to commit them for trial for various offences committed by them.

I have heard learned counsel for the parties and perused the case file.

The complainant has alleged that on the relevant date i.e. 28.12.2007 when he was sunbathing during winter season in front of his house and was sitting on a cot with one Darshan Singh, the accused,

who were playing cricket in the common chowk, were advised by the complainant not to play there as it may cause injury to the complainant and others. On this, a hot altercation took place between them and the accused caused injury to the complainant. The accused acted on the instigation of Lajpat (accused No.6 in the complaint). The complainant was threatened with dire consequences. He was rescued by his wife Malkit Kaur and one Darshan Singh.

Interestingly, the petitioner-complainant, who alleged that the injury caused to him was by the accused, had failed to get himself examined in support of his complaint before the trial Court. Moreover, when he was medically examined, the doctor opined that the complainant himself had consumed liquor as at that time smell of liquor was found present from his mouth. The court below has rightly declined summoning of the accused except Amit. The case of the complainant is completely doubtful. It is not only doubtful rather from the face of it when he has failed to get himself examined, it can also lead to an inference that he has falsely implicated the accused. The complainant has not assigned any reason for his non-examination. Further, the doctor CW1, who examined the complainant, has opined that smell of liquor was found present from the mouth of complainant at the time of his medical examination. It creates doubt about the veracity of the complaint itself. Since the sole accused, who has been summoned, namely, Amit, has not come forward before the Court, this Court is not inclined to make any observations about his role at this

stage.

For the reasons mentioned above, this Court does not find any scope for interference in the case and accordingly, the present petition stands dismissed.

The observations made hereinabove shall not construe any expression on the case pending before the court below.

(HARI PAL VERMA)
JUDGE

19.07.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No