

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

CRR No.1274 of 2014.
Decided on:-11.09.2017.

Ashok Kumar.

.....Petitioner.

Versus

Ram Avtar and others

.....Respondents.

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

Present:- Mr. Tara Chand Dhanwal, Advocate
for the petitioner.

None for the respondents.

HARI PAL VERMA, J.

The petitioner-complainant has filed present revision petition against the order dated 25.01.2014 passed by learned Additional Sessions Judge, Bhiwani, whereby the summoning order dated 16.07.2013 passed by learned Judicial Magistrate 1st Class, Bhiwani against the respondents-accused, was set aside.

Briefly stated, the petitioner had filed a complaint under Sections 323, 452, 499, 500 and 506 read with Section 34 IPC against the respondents-accused. As per the complaint, the complainant and respondents-accused had constructed a common wall. The accused had assured that they would bear half of the expenses of the common wall. However, when the petitioner demanded half of the cost of the common wall, the accused lingered it on. In the year 2005, when the petitioner went to the house of the accused and demanded money, the accused abused the complainant. The respondent No.2

Laxmi Devi gave an injury on his eye and due to this injury, the complainant lost his left eye-sight. Thereafter, a Panchayat was convened and the matter was compromised.

As per the compromise, the respondents-accused No.1 and 2 were required to give money for treatment of the eye of the petitioner and the amount of construction of the wall. When the petitioner had asked the accused to give money so that he can get his eye operated, the accused refused. Thereafter, on 12.07.2011 at about 6 O'clock, the accused in furtherance of their common intention entered into the house of the complainant and abused him. They had also given him beatings mercilessly. The accused had threatened the complainant that they would kill him on the next available opportunity. Thereafter, the complainant had been taken to General Hospital, Bhiwani, where the doctors had asked that before getting treatment, the complainant should inform the police. However, when the complainant approached the police for lodging the FIR, the police had refused to do so. Hence, the complaint.

Vide order dated 16.07.2013, learned Magistrate had issued process of summoning against the respondents-accused for offence under Sections 323, 452 and 506 read with Section 34 IPC only.

Aggrieved against the aforesaid order of summoning, the respondents-accused filed a revision petition before the Court of Session. Their revision petition was allowed by learned Additional Sessions Judge, Bhiwani vide order dated 25.01.2014 by setting aside the order of summoning passed by learned Magistrate.

It is in these circumstances, the petitioner-complainant has filed the present revision petition.

Learned counsel for the petitioner-complainant has argued that the petitioner and his son Nitin had appeared before the trial Court as CW1 and CW5 respectively and supported the contents of the complaint. Moreover, in his preliminary evidence, the petitioner had also examined three more independent witnesses, namely, Sachin, Naveen Kumar and Budhi Ram as CW2 to CW4 respectively, who supported the petitioner's version. At the stage of summoning, only a prima-facie case is required to be seen and the Court is not required to decide the complaint at a threshold. The preliminary evidence so adduced by the petitioner-complainant on oath was sufficient enough for summoning the respondents-accused. The petitioner was not required to prove the documentary evidence. Section 200 Cr.P.C. provides that the requirement is only for examination of the complainant.

He has further contended that the respondents-accused had not only refused to pay the expenses of common wall, rather, respondent-accused No.2 Laxmi Devi had given an injury on the eye of the petitioner-complainant and due to this injury, he has lost his eye-sight. The accused had entered into a compromise that they will give money for treatment of the complainant as well as cost of the common wall. When the petitioner had asked for the amount so as to get his eye operated, the accused in furtherance of their common intention entered into the house of the complainant and abused him. They had also given merciless beatings to him. Thereafter, the complainant was taken to General Hospital, Bhiwani, but the doctors had asked that the

matter should be reported to the police. However, the police refused to lodge the FIR. Therefore, the petitioner had no option, but to file a complaint.

Having heard learned counsel for the petitioner and perusing the orders passed by the Courts below, it is clear that the petitioner-complainant had filed the complaint on 20.07.2011, whereas the alleged occurrence had taken place on 12.07.2011.

The petitioner-complainant has not placed on record any documentary evidence which can show that the respondents-accused had agreed to pay 50% amount spent on the construction of common wall. As per the sale deed placed on the file, the petitioner had purchased the house constructed in the area of 50 square yards from Balbhadra son of Jagdish on 28.10.1998. In the said sale deed, it is mentioned that the vendor and vendee will bear the expenses of common wall in equal shares. Thereafter, said Balbhadra had sold the remaining 74 square yards area adjoining the house of the petitioner to respondents No.1 and 2, namely, Ram Avtar and Laxmi Devi vide registered sale deed dated 21.12.2001. In the said sale deed, it is nowhere mentioned that the respondents No.1 and 2 shall make the payment of 50% amount spent on the common wall by the petitioner.

In order to prove his case, the petitioner-complainant has examined five witnesses in his preliminary evidence including himself as CW1. So far as CW5 Nitin is concerned, his testimony cannot be relied upon as he being the son of petitioner, is an interested witness. CW3 Naveen Kumar is son of Shyam Lal, Halwai, who took responsibility of petitioner-complainant before the police. CW2 Sachin had also taken responsibility of the petitioner before the police. In fact, a complaint dated 14.05.2010 was

moved by respondent No.2 Laxmi Devi before Superintendent of Police, Bhiwani for taking action against the petitioner-complainant. Thereafter, she had also filed a private complaint against the petitioner. Vide order dated 08.04.2011, the petitioner-complainant was summoned by the Magistrate in the said complaint to face trial under Sections 354 and 452 IPC. However, the matter was compromised between the parties, and the compromise was duly signed by the petitioner-complainant, Shyam Lal, Sachin and Sanjiv. Interestingly, in the said compromise, the petitioner had admitted that he will not publicize about the complaint made by respondent No.2 Laxmi Devi. Thus, the petitioner had not only apologized, rather, admitted his fault. In these circumstances, it cannot be disputed that there was a motive on the part of the petitioner to file the present complaint against the respondents-accused and, therefore, the possibility of counter-blast cannot be ruled out.

In the present case, no medical evidence has been produced by the petitioner in support of his case. The oral testimony of the petitioner cannot be believed in its totality as he has already been summoned by the Magistrate to face trial under Sections 354 and 452 IPC on the basis of complaint filed by respondent No.2 Laxmi Devi.

Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998)*** 5 Supreme Court Cases 749 has held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate

summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

Therefore, in the light of the judgment of Hon’ble Supreme Court in ***Pepsi Foods Limited and another’s case (supra)*** and noticing the fact that the possibility of false implication of the respondents-accused cannot be ruled out as the petitioner-complainant is already facing trial under Section 354 and 452 IPC on the basis of complaint made by respondent No.2 Laxmi Devi, this Court finds that no interference is warranted.

Accordingly, the impugned order dated 25.01.2014 passed by learned Additional Sessions Judge, Bhiwani is affirmed and the present revision petition, being devoid of any merit, is dismissed.

September 11, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No