

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-2295-2018

Date of decision: 06.04.2018

Gulkaran Singh @ Ginni

..... Petitioner

Versus

Navdeep Kaur Kang and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. PS Ahluwalia, Advocate for the petitioner.

RAMENDRA JAIN, J. (ORAL)

1. Through this revision under Article 227 of the Constitution of India, challenge has been laid to the order dated 18.12.2017 (Annexure P-8) of the trial Court, whereby application under Order 7 Rule 11 read with Section 9 of CPC and Sections 165 and 175 of the Motor Vehicles Act, 1988, dated 22.09.2017 (Annexure P-6) of petitioner-defendant No. 5, was dismissed.

2. Briefly stated, the matrimonial chord of contesting respondent No. 1-Navdeep Kaur Kang and proforma respondent No. 3-Ravisher Singh, wife and husband, for some reasons did not run smoothly. Therefore, they set apart their companionship. Consequently, respondent No. 1 started living with her parents. On 12.04.2010, when she was going to her college to attend M.Ed. Class, on the way a truck-trailer bearing registration No. PB-23-F-1261, allegedly driven by respondents No. 2, struck and crushed respondent No. 1-plaintiff under its front portion and pushed her into the dirty water adjoining the road. Respondents No. 2 and 3 both by leaving the

offending truck-trailer on the spot fled away. The matter was reported to the police. Initially, a case was registered under Sections 307, 323 and 120-B IPC involving the petitioner also. However, upon a application of Rachpal Singh S/o Jaswant Singh (father of respondent No. 1-plaintiff), investigation was conducted by Superintendent of Police (Detective), Fatehgarh Sahib and respondents 3 to 5 and the petitioner-defendant No. 5 were declared innocent. The Enquiry Officer also made recommendation for striking out Sections 307, 323 and 120-B IPC and registration of case under Sections 279, 337 and 338 IPC against respondent No. 2-Jaswinder Singh, vide his enquiry report dated 11.05.2010 (Annexure P-3). Consequently, final report was filed only against respondent No. 2, under Sections 279, 337 and 338 IPC. He was charge-sheeted accordingly, vide charge-sheet Annexure P-4.

3. Being dis-satisfied, the complainant-Rachpal Singh, father of contesting respondent No. 1 filed a criminal complaint under Sections 323, 326, 307, 498-A, 496, 120-B, 148 and 149 IPC against the petitioner-defendant No. 5 as well as respondents No. 2 to 5, wherein they were summoned to face trial by the learned Judicial Magistrate. In the meantime, contesting respondent No. 1 filed a suit for recovery of damages, on account of injuries caused to her against petitioner-defendant No. 5 and respondents No. 2 to 5. Upon notice, respondents No. 2 to 5 and the petitioner appeared and moved an application Annexure P-6 for rejection of the plaint.

4. After hearing both the sides, the learned trial Court dismissed the said application vide order Annexure P-8 impugned herein.

5. Learned counsel for petitioner-defendant No. 5 *inter alia* contends that the learned trial Court had erroneously dismissed the said

application by ignoring the fact that jurisdiction of the Civil Court is specifically barred under Section 175 of the Act. The trial Court also lost sight of the fact that according to the allegations of contesting respondent No. 1-plaintiff, it was a motor vehicular accident case. Therefore, her suit for damages in Civil Court was not maintainable. In support of his contentions, learned counsel has placed reliance upon a judgment in **Satyavir Vs. Satbir Singh and others, 2010(4) RCR (Civil) 5.**

6. Having given considerable thought to the submissions made by learned counsel for petitioner-defendant No. 5 and going through the impugned order, this Court finds the instant revision completely devoid of any merit for the reasons to follow:

7. According to contesting respondent No. 1-plaintiff, respondent No. 2 deliberately hit his truck-trailer on her person with an intention to cause her injuries in connivance with her husband-respondent No. 3, namely; Ravisher Singh, while she was going to college to attend her M.Ed. classes. Petitioner-defendant No. 5 was instrumental in causing the injuries to her as he had helped respondents No. 2 to 5 by disclosing the timings of contesting respondent No. 1 for going to her college. He was noticing the time of journey of respondent No. 1-plaintiff and reported same to the offenders.

8. From the above story of contesting respondent No. 1-plaintiff, it is crystal clear on record that the truck-trailer was used as a weapon of offence and not that the alleged accident had occurred per chance without any intention to cause injuries to contesting respondent No. 1-plaintiff.

9. Therefore, by any stretch of imagination, it cannot be said that the jurisdiction of Civil Court was barred. For ready reference, relevant part

of the impugned order is reproduced hereunder:

“On the other hand, there was also material on record making out prima facie a case against the defendants u/s 323/307/498A/120B/149 IPC. Primary among them was a copy of the FIR No. 49 dated 15.04.2010 u/s 323/307/120B IPC which was also exhibited as Ex. P1 by the respondent/plaintiff. Further, a complaint was also preferred by father of the respondent/plaintiff against the defendants u/s 323/326/307/498A/496/120B/149 IPC which was exhibited as Ex. P2. There was also copy of order dated 07.01.2012 passed by then Learned CJM, Fatehgarh Sahib summoning all the defendants u/s 323/307/498A/120B/149 IPC.

Thus, in view of the above discussed conflicting positions, a rather inconclusive picture emerged in as much as if the former set of orders and proceedings was to be believed, the case was made out of an accident which deprived this court of the jurisdiction to try the present case, whereas if the latter set was to be believed the case was made out of an intentional assault and not an accident in which was this court had the jurisdiction to try the suit. However, owing to this prevailing confusion, nothing in concrete terms can be said as of date.

Faced with this dilemma, adoption of such an

approach is mandated and warranted which advances the larger interest of justice and not in one which scuttles it. Allowing the present application will deprive the parties, more importantly the respondent/plaintiff, of a fair chance of hearing and putting forth their case to which every person in a court of law is entitled. On the other hand, dismissing the application will afford a fair opportunity to both the parties of being heard thereby enabling them to present their version before the court and further render this court better placed and on an improved footing in deciding the matter on merits with the assistance of evidence so led by the parties in support of their respective claims. Thus, dismissing the application will keep the suit intact enabling the parties to present their case along with evidence thereby affording them an opportunity to be heard on merits whereas allowing it will only amount to rejection of the plaint without evidence in oblivion to its merits and only on a technical ground.

Appraised thus, the present application stands dismissed.”

10. That apart, petitioner-defendant No. 5 has been summoned along with respondents No. 2 to 5 in a criminal complaint case to face trial under Sections 323, 326, 307, 498-A, 496, 120-B, 148 and 149 IPC. Learned counsel for the petitioner has not been able to convince this Court as to how the impugned order Annexure P-8 warrants any interference. The

same is perfectly legal.

11. In view of the discussion made above, the instant revision being completely devoid of any merit is dismissed.

12. It is made clear that nothing observed here-in-above shall have any binding on the merits of the case.

April 06, 2018
rishu

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No