

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

CRM-M-11980 of 2018.

Decided on:-August 01, 2018.

Ram Murti.

.....Petitioner.

Versus

Mohinder Singh.

.....Respondent.

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

Present:- Mr. Ravi K. Mattoo, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.PC for setting aside the impugned order dated 10.06.2016 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Patiala, whereby the complaint under Section 379 IPC filed by the petitioner against the respondent was dismissed.

Challenge has also been laid to the order dated 30.08.2017 (Annexure P-4) passed by learned Additional Sessions Judge, Patiala, whereby revision petition filed by the petitioner against the aforesaid order dated 10.06.2016 (Annexure P-2), was dismissed.

Briefly stated, petitioner Ram Murti (hereinafter mentioned as the complainant) was an acting Sarpanch of village Bollar Kalan, Block Sanour, Tehsil and District Patiala in the year 2011. She filed a complaint under Section 379 IPC against respondent Mohinder Singh to the effect that during the period of October-November, 2011, the Gram Panchayat had laid

down bricks and cement in the streets of village Bollar Kalan. The bricks and cement were laid in the streets leading to the house of the respondent and in the process, 4000 bricks were left unused in the street. However, after two days of completion of work in the street, the respondent had stolen the aforesaid 4000 bricks and took the same to his house by lifting the bricks from the side of the road. Hence, the respondent committed the offence of theft. The commission of the offence of theft was seen by Karam Singh son of Prem Singh and he requested the respondent not to steal the bricks, but he did not listen to said Karam Singh and had taken the bricks to his house. The complaint was moved to the police on 17.11.2011 narrating the offence committed by the accused. The police did not take any action on the complaint. Even an application was moved to the Senior Superintendent of Police concerned and to the higher authorities, but no action was taken. Consequently, the present complaint was filed.

Vide impugned order dated 10.06.2016, the said complaint was dismissed by learned trial Court by observing that in the complaint even the date of occurrence has not come on record. It is only during the examination of the complainant and witness Karam Singh, the date of occurrence was submitted, but the complaint does not contain any such specific date and time. Apart from that, the alleged occurrence had taken place on 10.11.2011, but even the Sarpanch had moved an application for the first time to the SHO, Police Station Sanour, District Patiala on 17.11.2011. No justified reason has been given to explain this delay in lodging the complaint.

Revision petition filed against the judgment dated 10.06.2016 was also dismissed by learned Additional Sessions Judge, Patiala on 30.08.2017.

It is in these circumstances, the petitioner has filed the present petition challenging the judgments of the Courts below.

Learned counsel for the petitioner has argued that the impugned orders passed by the Courts below are based on conjectures and surmises. The incident of theft was witnessed by Karam Singh (CW2), who asked the respondent not to steal the Panchayat's bricks. When the respondent did not pay any heed, then the petitioner being acting Sarpanch of the village asked him (respondent) to return the bricks, but the respondent lingered on the matter on one pretext or the other. Thus, left with no other option, a resolution was passed on 16.11.2011 and the matter was reported to the police on 17.11.2011. Thus, the delay was not fatal, but a time gap where the Gram Panchayat afforded the respondent with a fair opportunity to return the stolen bricks without legal implications.

He has further contended that the Courts below have failed to appreciate the pleadings as well as the evidence produced on record by the complainant and, therefore, the impugned order dated 10.06.2016 passed by learned Magistrate as well as the impugned judgment date 30.08.2017 passed by learned revisionary Court are liable to be set aside.

I have heard learned counsel for the complainant.

There is a concurrent finding of fact recorded by the Courts below that in the complaint filed by the complainant, the crucial details i.e.

the date of commission of alleged theft has not been mentioned. Even on 17.11.2011, when the matter was reported to the police, no such date was mentioned. The date of alleged theft was disclosed for the first time in the preliminary evidence as adduced by the complainant, wherein it was alleged that the offence of theft was committed by the respondent on 10.11.2011. Thus, in the absence of any specific date of theft in the complaint coupled with the fact that the matter was not reported to the police for a week, this Court finds that the complainant has failed to make a *prima facie* case against the respondent which could warrant his summoning in the case. Thus, the Courts below have rightly declined to summon the accused.

Accordingly, the present petition, being devoid of any merit, is dismissed.

August 01, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No