

CRM-M-16317 of 2018

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

CRM-M-16317 of 2018
Date of decision: 31.10.2018

Jaibir

.....Petitioner

versus

The State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Gopal Sharma, Advocate, for the petitioner.
Mr. Vikramjit Singh, Addl. A.G., Haryana.
Mr. Anil Ghangas, Advocate, for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C. prayer has been made for setting aside order dated 26.02.2018 of the revisional Court, whereby order of the trial Court dated 02.06.2015 summoning respondent No.2 under Section 307 IPC was set aside.

Briefly, on 09.05.2012, petitioner threw a pebble towards the house of respondent No.2 in order to shoo away monkey, but the said pebble inadvertently fell in the house of respondent No.2, who resultantly got infuriated and fired a gun shot upon the petitioner in order to kill him, pellets of which hit the chest of the petitioner near right nipple.

On these broad allegations, FIR No.152 dated 11.05.2012 under Sections 285, 338 IPC and 30 of the Arms Act was registered against respondent No.2. After investigation, final report under Section 173(2) was also filed against him for charge-sheeting him under the aforesaid Sections.

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No.2 under Section 307 IPC, filed a private complaint in Court under Sections 307 IPC and 27 of the Arms Act, in which respondent No.2 was ordered to be summoned vide order dated 02.06.2015 (Annexure P-2).

Being aggrieved, respondent No.2 filed revision against the aforesaid order. After hearing both the sides, revisional Court accepted the revision, thereby setting aside the order of the trial Court vide impugned order dated 26.02.2018.

Learned counsel for the petitioner *inter alia* contends that impugned order of the revisional Court is based on surmises and conjectures. The same has been passed without appreciating the fact that provisions of Section 210(1) Cr.P.C. are not applicable in the instant case, because the investigation has already been completed by the police and final report under Section 173(2) was presented in Court on 09.08.2012 against respondent No.2 under Sections 285, 338 IPC and 30 of the Arms Act, whereas private complaint under Sections 307 IPC and 27 of the Arms Act was filed by the petitioner on 18.08.2012 i.e. nine days after filing of the final report under Section 173(2) Cr.P.C. Since private complaint and FIR case were distinct to each other against respondent No.2, therefore, both could not have been ordered to be tried together and reconsider all the material available on record and formulate an independent opinion regarding the course of further trial as required under the statutory scheme. In support of his contentions, learned counsel for the petitioner placed reliance on ***Harjinder Singh v. State of Punjab and others***, 1985(1) R.C.R. (Criminal) 289 (S.C.) and ***Darshan Singh vs. Sukhdev Singh and others***, 2010(3) R.C.R. (Criminal) 205.

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the legality and validity of the impugned order, contends that the revisional Court has rightly directed the trial Court to reconsider the material on record and proceed further with the complaint case and FIR case.

Having given anxious consideration to the submissions made by both the sides, this Court finds that instant petition is completely devoid of any merit for the reasons to follow.

In both the above authorities relied upon by learned counsel for the petitioner, Hon'ble Supreme Court and this Court have held that complaint case and FIR case has to be tried together, but evidence has to be recorded separately and have to be decided simultaneously by separate judgments.

Perusal of the impugned order shows that no contrary observation has been made by the revisional Court in disregard to the aforesaid authorities. Revisional Court has simply directed the learned Chief Judicial Magistrate to try the complaint case and FIR case together, either himself or to assign to some other Court of competent jurisdiction as per rules, without making any observation qua recording of single evidence in both the cases. Therefore, it is obviously evident that trial Court, which would try the complaint case and FIR case, would definitely, in terms of aforesaid judgments, shall record evidence separately in both the cases.

This Court has no dispute with the submission of learned counsel for the petitioner that provisions of Section 210(1) Cr.P.C. are not applicable to the present case, but its facts and circumstances are governed by Section 210(2) Cr.P.C., which envisages that Magistrate shall enquire into or try together the complaint case and case arising out of the police

report as if both the cases were based on police report.

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Since impugned order of the revisional Court has not adversely affected the right of the petitioner, therefore, the same is not required to be interfered with.

Dismissed.

October 31, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No