

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

**CRM No.3484 of 2018 IN/AND
CRM-M No.27671 of 2017
Decided on: 12.03.2018**

Sanjay

....Applicant/Petitioner

Versus

Rakesh and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. N.S. Panwar, Advocate
for the applicant/petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

CRM No.3484 of 2018

Prayer in this application is for recalling the order dated 16.01.2018 whereby CRM-M No.27671 of 2017 has been dismissed for non-prosecution.

Heard.

In view of averments made in the application supported by an affidavit of N.S. Panwar, Advocate, the application is allowed, the order dated 16.01.2018 is recalled and the main petition is ordered to be restored to its original number and is also taken up today for hearing.

CRM-M No.27671 of 2017

Prayer in this petition is for setting-aside the impugned orders dated 20.11.2015 (Annexure P1) passed by the trial Court vide which, in a criminal complaint filed by the petitioner against respondents No.2 to 10 under Sections 323, 326, 324, 452, 506, 148

and 149 IPC was dismissed and only respondent No.1 was summoned to face the trial for commission of offence punishable under Sections 323, 325, 452 and 506 IPC as well as the order dated 10.05.2017 (Annexure P2) passed by the Revisional Court dismissing the revision filed by the petitioner.

Brief facts of the case are that the petitioner filed a complaint with the allegations that on 31.08.2012, the accused persons demolished the boundary wall raised by one Bheema son of Tej Ram in order to encroach upon his plot and inflicted injuries to Bheema and his wife and the complainant has accompanied the wife of Bheema to police post. The said Bheema is in relation of the petitioner and at about 01/02:00 pm when the complainant has gone to his house, the accused persons, in conspiracy with each other entered the house of the petitioner and raised a lalkara that he will be taught a lesson for helping Sumitra wife of Bheema and on that account, all the 10 accused persons caused injuries to the petitioner. It is further stated in the complaint that the complainant was taken to hospital and he remained admitted in PGIMS, Rohtak upto 01.09.2012 and despite sending a ruqa to police, no statement of the complainant was recorded and no action was taken against the accused persons.

In preliminary evidence, the petitioner examined himself as CW1, an eyewitness Neetu as CW2 and Dr. Saurabh, Medical Officer, General Hospital, Panipat as CW3 and placed on record documents i.e. Ex.C1 application moved by the complainant to Superintendent of Police, Panipat, Ex.C2 the Medical Record, Ex.C3

discharge slip and Ex.C4, the MLR of the complainant.

The trial Court vide impugned order dated 20.11.2015, dismissed the complaint qua accused Nos.2 to 10/respondents No.2 to 10 and summoned only accused No.1 namely Rakesh under Sections 323, 325, 452 and 506 IPC. The trial Court while dismissing the complaint against respondents No.2 to 10 held that as per the report submitted by the police under Section 202 Cr.P.C., respondent No.2, Raghbir and respondent No.3 – Preeta were found to be very old aged persons and were not involved in the occurrence and that the fight has taken place between the petitioner/complainant – Sanjay and accused No.1 – Rakesh and no other person was involved in the occurrence. It is also held by the trial Court that though the petitioner while appearing as CW1 has attributed injuries to all the 10 accused persons, however, the same is not corroborated with the MLR Ex.C4 where he sustained only 04 injuries and further, as per the allegations in the complaint and oral statement of the complainant, the injuries were caused by a sharp edged weapon whereas the MLR do not support this fact.

Thereafter, the petitioner filed a revision before the Additional Sessions Judge and the same was also dismissed vide order dated 10.05.2017. The operative part of the order is reproduced as under:-

“9. After having heard learned counsel for the revisionist-complainant, I find no merit in any of his contentions.

10. Perusal of medico-legal report Ex.C4 and statement of CW3 Dr.Saurabh, Medical Officer, General Hospital, Panipat reveals that the complainant sustained

four injuries. Injury no.1 was caused by blunt weapon and was grievous in nature. Injuries no.2 and 3 were caused by blunt weapons and were simple in nature whereas with regard to injury no.4, it was mentioned that kind of weapon and nature of injury cannot be commented. Thus, medico-legal report Ex.C4 does not disclose any sharp injury to the complainant, therefore, question of summoning any of the accused under Section 326 IPC does not arise at all when there was no grievous injury upon the person of the complainant with sharp weapon. Otherwise also, complainant allegedly received four injuries and the number of accused was ten. Complainant Sanjay while appearing as CW1 has attributed injury to each and every accused, therefore, in this manner, there would have been at least more than ten injuries on the person of the complainant which further falsifies his stand that all ten accused inflicted injuries to him.

11. It is also pertinent to mention here that the complaint was sent to concerned Station House Officer for investigation under Section 202 Cr.P.C. and it was reported by the police that the occurrence did not take place. It was also mentioned in the report that accused Raghbir and Prita are extremely old aged persons and were not involved in the occurrence. It has been specifically reported that the incident took place between complainant and accused Rakesh and no other person was involved in this occurrence. Thus, keeping in view the aforementioned facts and circumstances, I find no reason to differ with learned Trial Court.

12. Summoning of accused in criminal case is a serious matter. Criminal law can not be set into motion as a matter of course. Reliance in this regard may be placed upon authority in case titled M/s.Pepsi Foods Limited Versus Special Judicial Magistrate, 1997(4) RCR 761,

wherein Hon'ble Supreme Court has held that 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 criminal law set into motion. The order of 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 that would be sufficient for the complainant to succeed in bring home the charge against the accused. It is not that Magistrate is silent spectator at the time of recording of preliminary evidence before summoning of accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put question 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.

13. As a sequel to my above discussion, I find no illegality, irregularity or perversity in the impugned order dated 20.11.2015 passed by learned Magistrate warranting any interference. Thus, finding no merit in the revision, same stands dismissed. Trial court record along with a copy of this judgment be sent back. Revision file be consigned to records.”

Counsel for the petitioner has submitted that both the Courts below have not appreciated that all the accused persons in conspiracy with each other have caused injuries to the petitioner and he has given the details of each and every injury caused by all the 10

accused persons. It is further submitted that the injuries sustained by the petitioner were duly corroborated by the MLR Ex.C4 which is proved by the statement of CW3 – Dr. Saurabh and, therefore, the Courts below have erred in not summoning the respondents No.2 to 10.

After hearing the counsel for the petitioner, I find no merit in the present petition filed under Section 482 Cr.P.C. Both the Courts below on appreciating of the preliminary evidence have recorded a finding that as per the report of the police submitted under Section 202 Cr.P.C., two persons i.e. respondents No.2 and 3 are found to be very old aged infirm persons and the fight has taken place between the petitioner and accused No.1 – Rakesh only. The ocular version given by the complainant that all the 10 persons have caused injuries to him do not find corroboration from the MLR Ex.C4 where 04 injuries have been reflected. Moreover, the ocular version given by the complainant that the injuries were caused with a sharp edged weapon also, is not corroborated by the medical evidence where the doctor has opined in MLR Ex.C4 that the injuries were caused by a blunt weapon and injuries No.2 and 3 were found to be simple in nature and injury No.1 was grievous in nature and attributed to accused No.1. Moreover, there is no evidence on record to prove the first version given in complaint i.e. the accused persons demolished the wall of Bheema as neither he is examined as a witness nor any complaint was given by him to the police, is proved on record.

The Courts below have relied upon the report submitted under Section 202 Cr.P.C. submitted by the SHO of the police Station

after conducting enquiry. Since, the trial Court has summoned only accused No.1 holding that there is no evidence against other accused Nos.2 to 10 to summon them while summoning accused No.1 only and this order is upheld by Revisional Court, I find no merit to exercise the jurisdiction under Section 482 Cr.P.C. as the arguments advanced by counsel for the petitioner are based on pure appreciation of the evidence, for which both the Courts below have recorded a concurrent finding.

No ground for interference is made out.

Dismissed.

Nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(ARVIND SINGH SANGWAN)
JUDGE

12.03.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No