

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

**CRM-M-30486-2016
Date of decision:10.5.2018**

Nathi Ram and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Anand Bhardwaj, Advocate
for the petitioners.

Mr. Vikas Chopra, DAG, Haryana
for respondent No.1.

Mr. Surinder Dagar, Advocate
for respondent No.2.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed under Section 482 of the Criminal Procedure Code ('Cr.P.C.' - for short) vide which the petitioners have challenged the impugned order dated 6.6.2016 (P-8) passed by learned Additional Sessions Judge, Palwal whereby the said Court has confirmed the order dated 24.2.2015 (P-6) passed by learned Judicial Magistrate Ist Class, Palwal, whereby all the petitioners were ordered to be summoned to face trial for offences punishable under Sections 148,

149, 323, 427, 452 and 380 of the Indian Penal Code ('IPC' - for short).

The argument raised on behalf of the petitioners is that other accused namely Dharm Singh, Thandi Ram, Mahesh, Ranbir Singh, Shamsheer Singh and Ashok who were facing criminal proceedings in FIR No.285 dated 20.6.2012 under Sections 147, 148, 452, 380 and 506 IPC, registered at Police Station City Palwal regarding the same occurrence have been acquitted by learned Trial Court vide judgment dated 29.8.2015 passed by learned Chief Judicial Magistrate, Palwal wherein the finding has been recorded that no occurrence had been taken place and reference is made to paragraph No.18 of the said judgment.

On the other hand learned State counsel and respondent No.2 have vehemently opposed the arguments raised by learned counsel for the petitioners and prayed for dismissal of the petition.

Heard learned counsel for the parties and perused the record.

Before proceeding further in the matter it is necessary to reproduce paragraph No.18 of the judgment dated 29.8.2015 passed by learned Chief Judicial Magistrate, whereby the accused thereunder were acquitted and the same reads as under:-

“Alleged incident also does not appear to have actually taken place because complainant claimed that they were waiting for the labourers to reach the spot, but alleged incident was timed at 6:30 A.M. in the morning and usually the labourers do not report at such hours for raising construction. PW-3 claimed that the timings of labourers was from 8:00 A.M. to 5:00 P.M. PW-4 deposed that they

had labourers who used to reach the spot at 6:30 A.M.. PW-5 deposed that the labourers had reached early in the morning because a lenter was to be laid on that day. Thus there are material contradictions in the statements of witnesses and it not being proved that the complainants were waiting at the spot of dharamshala for the labourers to reach at 6:30 A.M.”.

Perusal of the aforesaid paragraph reveals that findings were recorded in that judgment on the basis of material contradictions inter-se between PW-3, PW-4 and PW-5.

There is no dispute that evidence in that case was led by police/prosecution being an FIR case and in the present matter the prosecution has been initiated on the basis of a complaint filed by respondent No.2-Rameshwar Dayal and the list of witnesses as well as documents to be produced during trial has been supplied by respondent No.2. Thus, it cannot be presumed at this stage that whatever evidence was available in the FIR case will only be led in the complaint case as well. As, in the present case, it is for the complainant to prove the allegations in the complaint and at this stage it cannot be presumed that result in the complaint case would also be the same as in the FIR. Merely on the premise that in the FIR case one set of accused have been acquitted, it cannot be *ipso facto* presumed that in the complaint case also, the other set of accused would meet the same fate. Suppose, there is a converse position i.e. if the other set of accused would have been convicted in the FIR case, then it does not mean that in the complaint case

also the conviction is certain and that be so, then every trial will collapse and filing of criminal complaint shall be rendered as otiose.

The learned trial Court/Magistrate while passing the impugned summoning order dated 24.2.2015 (P-6) has clearly observed that after leading the preliminary evidence there are sufficient grounds to summon the accused under Sections 148, 149, 323, 427, 452, 380 of the Indian Penal Code ('IPC' - for short) and thus this Court will not hold the mini trial at this stage on the basis of judgement dated 29.8.2015, referred above by quashing the impugned summoning order as well as order passed by the Revisional Authority while exercising power under Section 482 Cr.P.C.. In view of the above, no ground is made out to interfere with the impugned order, consequently, the same stands dismissed.

10.5.2018
Gaurav Sorot

(MAHABIR SINGH SINDHU)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |