

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

CRM-M-37396-2017

Date of decision: 12.01.2018

Rakesh Kumar and others

...Petitioners

Versus

Kanta Devi

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sachin Ohri, Advocate,
for the petitioners.

JAISHREE THAKUR, J.

1. This is a petition that has been filed under Section 482 Cr.P.C. seeking quashing of Complaint No. 11 dated 19.01.2016 under Sections 452, 354, 323, 427, 506, 148 & 149 IPC titled as 'Kanta Devi vs. Rakesh Kumar and others' (Anexure P-1) and the summoning order dated 04.08.2017 (Annexure P-2).

2. In brief, the facts are that a complaint has been filed on the statement of Kanta Devi w/o Ram Lal, resident of village Kotli Farm, P.O. Jakolahri, District Pathankot, Police Station Kanwan alleging that her husband had purchased a plot measuring 608 Sq. feet situated within the Lal Lakir/ Abadi of village Kotli Muglan H.B.No. 254 Tehsil and District Pathankot, as per the judgment and decree dated 18.08.2008 passed by the Court of Sh. Harinder Singh Gill, PCS, Addl. Civil Judge (Sr. Divn.), Pathankot in case No. 120 dated 08.04.2006. As such the sale deed was executed through the Court vide sale deed dated 22.05.2009 and was duly registered with the Sub Registrar, Pathankot. A sum of Rs. 50,000/- have been paid as part of the sale consideration to Rattan Lal and balance amount

was deposited in Govt. Treasury. At the time of registration of the plot, possession of the same was handed over to the husband of the complainant and since then he has been in possession without any hindrance.

3. Thereafter, the husband of the complainant enclosed the said plot with four walls and has also installed a Tin sheeted gate on the entrance and as such came to be in peaceful possession of the plot. Thereafter, accused No. 2 & 3 (petitioner Nos. 2 & 3 herein) i.e. Roshan Lal and Tarsem Lal along with their uncle accused No.1 (petitioner No.1 herein) forcibly entered the plot in dispute and attacked the complainant and her husband. The matter was reported to the Police but no action was taken therein on account of the fact that the accused persons (the petitioners herein) are influential persons in the village and thereafter the said complaint was filed.

4. The Chief Judicial Magistrate recorded the preliminary evidence of the complainant Kanta Devi as CW-2 and her husband Ram Lal son of Achar Mal as CW-1 along with the independent witness Vidya Bharti as CW-3. The offence under Section 452 IPC was not proved and consequently no prima facie offence under Section 427 IPC was made out. It was further held that torn clothes were never produced before the Court or before the Police authorities and there is no averment that accused touched any private organ or body part of the complainant, therefore, no offence under Section 354 IPC was made out. However, on the ocular testimony of all the witnesses, the Chief Judicial Magistrate held that there was common intention on the part of the accused in manhandling the complainant and, therefore, they were summoned under Section 323 & 506 IPC.

5. Learned counsel for the petitioners urges that the reading of the statement of the complainant and her husband would not show that there are specific allegations against the petitioners that they had entered the plot with an intention to take over possession and in that scuffle tore the clothes of the complainant and that grievous injuries had been inflicted upon the complainant and her husband, which statements have not been relied upon since they have not been summoned under Sections 452, 354, 427, 148 & 149 IPC. It is argued that once the version of the complainant has been disbelieved on most counts, the summoning order under Sections 323 & 506 IPC is not sustainable and the very complaint and the summoning order deserve to be quashed.

6. I have heard learned counsel for the petitioners and have also perused the detailed summoning order that has been passed.

7. Learned Chief Judicial Magistrate has summoned the petitioners only under Sections 323 & 506 IPC which pertains to voluntarily causing hurt and criminal intimidation. The statements of witnesses have been recorded in Court and on consideration of ocular evidence the Chief Judicial Magistrate has summoned the petitioners under Sections 323 and 506 IPC while disallowing the rest. These statements at this stage, cannot be overlooked or ignored. The petitioners are of course at liberty to take all pleas accordingly in their defence.

Dismissed.

12.01.2018

Satyawan

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)
JUDGE

Yes.

No.