

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

**Crl. Misc. No. M-39285 of 2017 (O&M)
Date of decision: September 21, 2018**

Mangal Sen Gupta and others ... Petitioners

Versus

Naveen Gupta ... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikas Kumar, Advocate
for the petitioners.

None for the respondent.

SURINDER GUPTA, J.(Oral)

Learned counsel for the petitioners has argued that the learned trial Court after appraisal of the entire evidence produced on file has concluded that pre-charge evidence produced by the petitioners was not sufficient to pass the test 'if goes unrebutted than it would ultimately lead to conviction of the accused.' Learned Additional Sessions Judge, Faridabad accepted the revision against the order passed by learned Magistrate with the observations that the complainant by examining the remaining witnesses may throw light on any doubtful point and directed the trial Court to reconsider the matter.

FIR No. 274 dated 11.08.2005 was registered against the petitioners on the statement of complainant/respondent in which cancellation report was filed. The respondent filed a complaint in which the petitioners were ordered to be summoned after recording of preliminary evidence. Thereafter, in pre-charge evidence, the complainant/respondent examined ESI Rattan Singh as CW-1, who produced the record of FIR and

initiation of proceedings against respondent under Section 182 Cr.P.C. Anil Chaudhary was examined as CW-2, who has deposed that he had no knowledge about the fact as to who took the complainant to hospital and for how many days he was kept under treatment in hospital. Complainant himself appeared as CW-3.

Learned trial Court on detailed perusal of the evidence concluded that there is no sufficient evidence on record which if goes un rebutted, would ultimately lead to conviction of the accused persons/petitioners and discharged them.

Learned Additional Sessions Judge, Faridabad while disposing of the revision has observed in para 13 as follows:

“The evidence of the complainant was closely scrutinized and concluded finding given. It was lost sight of that the complainant has, as per his list, remaining witnesses for examination who might throw clear light on any doubtful point. The standard of test, proof and judgment which is applied at the final decision of the case was wrongly applied at the stage of consideration of charges. Applying a wrong test, the learned Judicial Magistrate reached a perverse conclusion that the case was worth discharge, which resulted in obvious miscarriage of justice. Ratio of law relied upon by the respondent counsel is not applicable to the facts of this case. In view of above facts and law, hence, the present revision is hereby allowed and impugned order dated 14.11.2014 is hereby set aside and learned Judicial Magistrate is directed that without being influenced by any observation made above, if at all, reconsider the matter. The parties are directed to appear before learned Judicial Magistrate First Class/Successor Court, Faridabad on 15.09.2017.”

Learned counsel for the petitioner has argued that the complainant has himself closed his evidence and there was no reason for the Court of Revision to observe that the witnesses mentioned in the list of witnesses may throw light on the doubtful points. The Court of Revision has virtually recorded the finding that evidence on record makes out no prima facie case for framing of charge against the petitioners.

The respondent was issued notice in this petition but has opted not to appear despite service.

I have perused the file. The trial Court has found evidence produced by the respondent against the petitioners as not sufficient to frame charge against them. Even the Court of Revision has not recorded the finding that a prima facie case is made out from the evidence on record to infer that petitioners have committed the offence as alleged by respondent. The trial Court has not found sole statement of complainant, sufficient to draw the conclusion that occurrence has taken place in the manner as alleged by him, particularly when version of the complainant has been found to be false by the police and he has been proceeded as per provisions of section 182 Cr.P.C.

Keeping in view the above facts, I find merits in this petition and the same is allowed. The judgment dated 07.09.2017 passed by the learned Additional Sessions Judge, Faridabad is set aside and the order dated 14.11.2014 passed by learned Judicial Magistrate Ist Class, Faridabad is affirmed.

(SURINDER GUPTA)
JUDGE

September 21, 2018
Jyoti-II

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No