

109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1804-2010 (O&M)

Date of decision: July 26, 2018

Rajinder

....Petitioner

Versus

Ram Niwas and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. R.N. Lohan, Advocate
for the petitioner.

Ms. Pratibha Yadav, Advocate
for respondent No.1.

Mr. Ashok Muthreja, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.(ORAL)

A complaint was filed before the learned Magistrate. He called report under Section 156(3) Cr.P.C. vide order dated 07.08.1998 from the police but no report was submitted after 14.11.2000. On that date following order was passed:-

“Report of SHO not received. Summons of SHO also received back served, but he has not appeared despite service. SHO be now called through bailable warrant with the report for 15.12.2001. Complainant also to bring the entire preliminary evidence on the date above fixed.”

Thus, the case was fixed for preliminary evidence for 15.12.2001.

On 15.12.2001, no evidence was produced and learned magistrate passed the following order:-

“No preliminary evidence of the complainant is present. Date is requested. Now to come up on 09.01.2001 for preliminary evidence of the complainant at his own responsibility.”

Thereafter, case was fixed for 09.01.2001. On that date, learned magistrate was on leave and on the subsequent date he had gone for a training. No other opportunity was granted to the petitioner. Thus, record transpires that only single opportunity was granted i.e. on 15.12.2001 to lead additional evidence. However, after receipt of the report from the police, he passed the impugned order dated 29.08.2006. He was convinced with the observation of the police.

The said order was challenged by filing a revision petition before the learned Additional Sessions Judge, Rewari which was ultimately heard and disposed of by the learned Additional Sessions Judge, vide impugned order dated 12.04.2010 with the following observations in Para No.12, which read as under:-

“Hence, in view of aforesaid discussions and observations, the criminal revision is allowed with no order as to costs. Since the learned trial court has already summoned the accused and committed case to the court of sessions. So, sending the matter back again to trial court shall be an exercise in futility. Accordingly, further proceedings against accused shall take place in sessions case already committed to the court. After due compliance, file of criminal revision be consigned to the record room”

I have heard learned counsel for the parties and have gone through the record.

A bare perusal of the FIR as well as complaint transpires that a *prima facie* case is made out against the petitioner. They have burnt a hut (commonly called as 'chappar'). Therefore, the offences under Sections 427, 436, 34 IPC have been made out.

Learned counsel for the petitioner further submitted that police conducted an inquiry and found the petitioner as innocent.

To the mind of this court, the police has no authority to critically examine the evidence. They can only submit the report and it is only judicial authority which is final authority to evaluate the evidence.

Learned counsel for the petitioner has placed reliance upon the judgment of Supreme Court in *Subhash Chand Vs. State (Delhi Administration)*, 2013 AIR (SC) 395 and the judgment of a coordinate bench of this court in *Mander Singh and others Vs. Ladi*. To the mind of this court, facts on those cases are distinguishable.

Keeping in view the facts and circumstances of the case, this court is of the view that impugned order does not suffer from any illegality or infirmity. Consequently, this petition has no force and is hereby dismissed.

Nothing said in this order have bearing on the merits of the case.

(RAJ SHEKHAR ATTRI)
JUDGE

July 26, 2018
m. sharma

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No