

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

Crl. Misc. M-42974 of 2017 (O&M)

Date of Decision: May 15, 2018

Jahid

...Petitioner

Versus

Sabila

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Mohd. Arshad, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

1. The instant petition has been filed under Section 482 Cr.P.C., seeking to challenge the order dated 29.04.2017 passed by the Additional Sessions Judge, Mewat, which was subsequently upheld by the Judicial Magistrate Ist Class, Mewat vide order dated 21.08.2017 whereby, the petitioners herein have been summoned under Sections 376-D, 392, 397, 506 of Indian Penal Code and Section 25 of Arms Act.

2. In brief, the facts are that, a complaint was made against the petitioners and two other persons under Sections 376-D, 392, 397, 506 of Indian Penal Code and Sections 25/54/59 of Arms Act. The Judicial Magistrate Ist Class, Mewat dismissed the said criminal complaint by an order dated 21.07.2016 on the ground that the allegations are false and no independent witness had been examined by the complainant. Aggrieved against the said order, a criminal revision came to be filed before the

Additional Sessions Judge, Mewat, who set aside the order of the trial court and directed the trial court to pass afresh order taking into consideration the observations made. Thereafter, the matter was re-examined by the Judicial Magistrate Ist Class, Mewat too, who has summoned the petitioners herein. Aggrieved against the said order, the instant petition has been filed.

3. Learned counsel appearing on behalf of the petitioners contends that the trial court after having gone into the issue, came to the conclusion that no evidence is available on the record to summon the petitioners. It is argued that the remand order as well as the summoning order are unsustainable.

4. I have heard learned counsel for the petitioners and also perused the orders passed.

5. Initially, the trial court dismissed the complaint primarily on the ground that no independent witness had been examined to substantiate the allegations of rape having been committed upon the complainant. The Additional Sessions Judge, Mewat reviewed the order so passed and the allegations as set out in the complaint, in which it was stated that she was alone at home when three persons Arshad son of Isa, Jahid son of Isa and one another person entered her house armed with weapons and committed rape with her and also took away ₹ 6,32,000/- and 4 tola gold and threatened that if she report the matter, they will kill her. The Additional Sessions Judge, Mewat perused the testimony of the complainant as well as the preliminary evidence, which she led. It was taken note of the fact that she had moved an application Ex.CW1/A before the police as well as an application to the Chief Medical Officer, Nuh, for medical examination as

well as the MLR by which she had been examined medically. The Additional Sessions Judge also noted that Dr. Jyoti Chauhan had been examined, who stated that she would be in a position to give final opinion after receiving the Forensic Science Laboratory report, while also taking note of the fact that the police had prepared the cancellation report without taking on record the FSL report. It was in this background that the matter was remanded back to the trial court to reassess the matter, as to whether the accused ought to be summoned or not. The trial court on appreciation of the evidence adduced by the complainant, came to the conclusion that a prima facie case has been made out against the petitioners herein.

6. This court does not find any infirmity in the orders so passed. It is well settled principle that at the stage of summoning, the court is not bound to see whether sufficient case for conviction has been made out or not, however, the court is to see if a prima facie case is made out. In the instant case, the evidence as led by the complainant, her statement and the MLR would prima facie make out a case for summoning the petitioners herein.

7. In view of the foregoing discussion, the petition in hand is hereby dismissed.

8. However, anything observed or said by this court, shall have no affect on the merits of the case.

May 15, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No