

CRR-1323 of 2014 (O&M)

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

CRR-1323 of 2014 (O&M)
Date of Decision: 19.09.2018

Abdul Rahim

....Petitioner

Versus

Aman

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Gurinder, Advocate, for the petitioner.

Mr. Shehbaz Thind, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this revision, challenge has been laid to order dated 11.02.2014 of the Revisional Court, Gurgaon, whereby order dated 06.10.2012 summoning the respondent and his co-accused has been set aside.

In nutshell, in the morning of 27.12.2010, respondent along with his accomplice, namely, Saraju and Faarukh caused grievous injuries to the petitioner in his plot. The police instead of taking action against the respondent and his co-accused aforesaid, converted the complaint of the petitioner into DDR No.36 dated 30.03.2011, showing it a case of free-fight between them and submitted a kalandra under Sections 107 and 151 Cr.P.C.

Being aggrieved, petitioner filed complaint (Annexure P-2) under Section 156 Cr.P.C. against the respondent and his co-accused under Sections 323, 324, 325, 326, 307 and 506 read with Section 34 IPC, in which, after recording preliminary evidence of the petitioner, vide order dated 06.10.2012 (Annexure P-3), trial Court summoned respondent and his

co-accused under Sections 323, 325, 506 read with Section 34 IPC,

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observing that no case is made out under Sections 324, 326 and 307 IPC against them.

Being aggrieved, only respondent preferred revision, which has been accepted vide impugned order dated 11.02.2014 and summoning order against respondent and his co-accused has been set aside.

Learned counsel for the petitioner *inter alia* contends that only respondent Aman had approached the revisional Court. Therefore, at the most, summoning order could be quashed by the revisional Court against him only and not qua other accused namely, Saraju and Faarukh. Learned counsel referring to ***State of Orissa v. Debendra Nath Padhi***, 2005(1) R.C.R.(Criminal) 297, further contends that revisional Court failed to appreciate that it was not competent to look into the evidence adduced by the respondent before trial Court. Rather it was the trial Court only, who could look into the same.

On the other hand, learned counsel for the respondent pleading the legality and validity of the impugned order, contends that during investigation on the complaint of the petitioner, respondent was found innocent. Therefore, kalandra under Sections 107 and 151 Cr.P.C. was filed against the petitioner also. Revisional Court has not committed any error in considering the aforesaid fact.

Having given thoughtful consideration to the rival submissions made by both the sides, this Court finds that instant revision merits acceptance partly, in view of the fact that Saraju and Faarukh co-accused of the respondent, who were also summoned vide impugned order, have not preferred or chosen to challenge the summoning order before the revisional

Court. Therefore, it is evident that impugned order of the revisional Court

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qua setting aside summoning order against Saraju and Faarukh is bad in law. Accordingly the same is set aside to this extent only. Consequently, summoning order qua aforesaid co-accused Saraju and Faarukh would remain in force and trial Court shall proceed against them in accordance with law.

As far as consideration of some facts by the revisional Court qua investigation done by the police on the complaint of petitioner and filing of kalandra under Sections 107 and 151 Cr.P.C. against him, which fact was intentionally and deliberately concealed by the petitioner before the revisional Court, is concerned, the same is a material fact to resolve the real controversy in between the parties. Therefore, this Court finds no fault in case the revisional Court has considered this aspect of the matter.

Facts and circumstances of ***Debendra Nath Padhi's*** case (supra) are altogether distinguishable. Therefore, no benefit of the same can be given to the petitioner. More so every case has its own peculiar and individual facts. Therefore, no citation applies unless and until the facts of the same squarely cover the facts of a particular case.

Petitioner himself has claimed that one Babu Dayal and Phool Singh had witnessed the incident. Phool Singh had handed over his affidavit to the police that on the alleged date of incident, respondent-Aman was not present on the spot. Petitioner though claimed the presence of aforesaid two witnesses on the spot, but did not cite them as witnesses in his complaint for the reasons best known to him. Before the trial Magistrate, petitioner examined himself only in support of his complaint not corroborated by any other eyewitness cited by him in the complaint, namely,

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Considering this aspect of the matter, impugned order qua setting aside the summoning of respondent is upheld.

Allowed partly.

September 19, 2018
R.S.

(Ramendra Jain)
Judge

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