

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

CRM-M-5843-2017

Date of decision:-22.2.2018

Suraj Prakash

...Petitioner

Versus

Ajay Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.N.S. Shekhawat, Advocate
for the petitioner.

H.S. MADAAN, J.

By way of moving the present petition under Section 482 Cr.P.C., the petitioner – Suraj Prakash seeks quashing of the judgment dated 9.11.2016 passed by learned Additional Sessions Judge, Gurgaon vide which the revision petition filed against the summoning order dated 9.11.2015 passed by Judicial Magistrate Ist Class, Gurgaon was accepted and the summoning order and resultant proceedings taken with regard to that were quashed.

Complainant Suraj Parkash had brought a criminal complaint against Ajay Kumar, Devender, Naveen, Bharat Bhushan, Manoj, Sunil and Vikram, all belonging to his village Sadhrana under Sections 323, 506, 148, 149, 34 IPC on the allegations that on 17.6.2011 at about 10:00 a.m., he, his father Ram Avtar, Parveen, Smt.Manoj,

Vijay Singh, Headmaster, members of Ramlila committee and several other respectables were present in the room of school in connection with an inquiry being conducted with regard to false application moved by Ramlila Committee against the Headmaster of School regarding misuse of some 450 feet crusher and 6000 bricks; that during the inquiry, Samunder Singh, Tek Chand, accused No.1 and his associates were sent at the site to see the material used; that after completion of the inquiry a verbal dual took place since accused No.1 became angry and addressed the headmaster and Ram Avtar as thieves; that all the accused started abusing Ram Avtar and threatened him that they would see everybody; that the complainant, Saryu, Ramphal, Pawan and Naresh were also present there; that a scuffle took place in which all the accused attacked the complainant and other persons. The matter was reported to the police but rather an FIR on false assertions was got lodged by the accused against the complainant and no action was taken on the statement made by the complainant to the police.

After recording preliminary evidence, Judicial Magistrate Ist Class, Gurgaon vide order dated 9.11.2015 summoned all the accused for the offences under Sections 323, 506, 148, 149 IPC. The accused had challenged the summoning order by way of filing the revision petition, which was accepted by learned Additional Sessions Judge, Gurgaon vide judgment dated 9.11.2016, which left the complainant aggrieved and he has approached this Court by way of filing the present petition.

I have heard learned counsel for the petitioner besides going through the record and I do not find any merit in the petition.

Learned Additional Sessions Judge, Gurgaon while accepting the revision petition has observed that the impugned summoning order is illegal and liable to be set aside and the complaint deserves to be dismissed on the ground of material concealment and if those facts were brought to the notice of the learned trial Magistrate, then he would not have summoned the accused and would have come to a definite conclusion that it was only a counter blast to the State case pending against the complainant and others. During arguments, it was admitted that criminal case regarding the same occurrence was pending against the complainant and others, which was got registered by revisionists/accused and it is further not in dispute that earlier two complaints titled 'Saryu Versus Ajay Kumar' and 'Sonu Versus Ajay Kumar' were filed against the revisionists/accused regarding the same occurrence, which were dismissed vide order dated 9.1.2013 by the trial Magistrate. Interestingly, both the complaints were filed through the same counsel, who had filed the complaint in hand. In that way, the complainant in this case has concealed material facts and and has not come to the Court with clean hands and a clear message needs to be given to the complainant and like minded persons that the door is always shut for such type of persons for redressal of their grievances, if their heart is not pure. Learned Additional Sessions Judge, Gurgaon dealing with the maintainability of filing of second complaint based on the same facts has observed that the main question is whether the complainant should have disclosed the factum of previous complaint or not and referring to the authority cited by learned counsel for the complainant, he has pointed out that in the said case law it was not stated that second

complaint is always maintainable in all circumstances, rather it was observed that such complaint can be filed under exceptional circumstances. Learned Additional Sessions Judge, Gurgaon has pointed out that the fact that occurrence is dated 17.6.2011, whereas the complaint was filed on 7.10.2013 after a long delay had been overlooked by the trial Magistrate more particularly when there was no explanation for such delay. Such delay along with conduct of the complainant pointing out that the complaint had been filed only as a counter-blast to the State case pending against the complainant and other accused.

In the present case, I do not find any such illegality or infirmity with the impugned order much less apparent on the face of it. The order is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned order while exercising powers under Section 482 Cr.P.C.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

22.2.2018
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No