

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

**CRM No.31405 of 2019 IN/AND
CRM-M No.22389 of 2016
Decided on: 15.10.2019**

Kaka Singh

....Petitioner

Versus

Sanjiv Kumar and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Arihant Jain, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

CRM No.31405 of 2019

Prayer in this application is for recalling the order dated 18.09.2019 whereby the main petition has been dismissed for non-prosecution.

Heard.

In view of averments made in the application supported by an affidavit of Muni Lal, Clerk of Mr. Arun Jindal, Advocate the application is allowed, the order dated 18.09.2019 is recalled and the main petition is ordered to be restored to its original number and is being taken up today for hearing.

CRM-M No.22389 of 2019

Prayer in this petition is for setting-aside the order dated 03.01.2015 passed by the trial Court vide which the trial Court at the stage of summoning of the respondents/accused has dismissed the complainant as well as the order dated 03.05.2016 whereby the revision

filed by the petitioner against the order dated 03.01.2015 was dismissed by the Revisional Court.

Brief facts of the case are that the petitioner filed a complaint under Sections 341, 365, 323, 324, 325, 34, 107 IPC with the allegations that on 29.05.2012, the complainant was going on his motorcycle and he was stopped by the police party at the barrier and on account of non-presentation of the documents of the motorcycle, the accused No.2 – Kewal Singh abused him and gave slaps. Thereafter, the petitioner was taken to the Police Station and was kept there. Later on, he was again given beatings by the police officials by putting off his clothes. At that time, the SHO, Police Station Lehra was also present. The police, thereafter, gave him a motor vehicle challan and released him. Thereafter, the petitioner informed Harjinder Singh from his mobile phone and he got him admitted in Civil Hospital on 30.05.2012 where the doctor conducted the MLR and the petitioner was discharged on 04.06.2012. The petitioner, thereafter, moved complaints to the Senior Superintendent of Police, Sangrur and the Director General of Police, Chandigarh but no action was taken.

In support of the allegations, the complainant himself appeared as CW1 and reiterated the version given in the complaint. Dr. Dimpy Goyal appeared as CW2 and proved the MLR on which 04 injuries were reported i.e. Injury No.1 – bruise on both the buttocks, Injury No.2 – pain over the abdomen with no external injury mark, Injury No.3 – pain over the left fore-arm without any swelling or external injury mark and Injury No.4 – pain over the right wrist joint with no swelling or no injury mark.

The complainant also examined CW3 – HC Prem Singh regarding a complaint Ex.C-4. Thereafter, CW4 – Harjinder Singh appeared as a witness and stated that he was informed by the complainant on phone and he took him to the hospital and got him admitted there. CW5, a Clerk from DTO office proved a copy of the challan of the petitioner – Kaka Singh and thereafter, the preliminary evidence was closed.

The trial Court, thereafter, vide impugned order dated 03.01.2015 dismissed the complaint by making the following observations:-

“9. It is the case of the complainant that the accused on 25.5.2012 forcibly took him in the police station where accused No.2 Kewal Singh and accused No.3 Jinder Singh who were having sticks along with other officials, to whom he can identify upon production gave beatings to him. The accused gave stick blows on his back and in his abdomen and that he in order to save himself brought his hand forward the blows of sottes were also inflicted on his hands due to which he had to face problem while standing and sitting. As per the complainant at that time, SHO P.S. Lehra was also present, who asked the accused No.2 Kewal Singh to teach a lesson to the complainant for restraining them from beating him. According to the complainant thereafter SHO, P.S. Lehra also gave beatings and also gave sottes blows upon his hand and feet. The complainant has alleged that he had been kept in lock-up for a night in the police station and had taken away Rs. 5,000/- which he was having in his pocket. According to the complainant on 30.5.2012 in the afternoon, he made call to Harjinder Singh and narrated him the entire story. After which,

Harjinder Singh got him released from the police station. As per the complainant, he and Harjinder Singh came back to the house and thereafter SHO, P.S. Lehra along with the police party came to their house and asked the complainant not to disclose anything about the occurrence to the higher officials, otherwise the complainant would be again lodged in the lock-up. The complainant has claimed that serious injuries have been inflicted to him by the accused. Admittedly, as per the version of the complainant there is no eyewitness of the occurrence, who could testify that he had seen the accused taking the complainant along with them to the police station. The accused has placed reliance upon the medical examination which was conducted by Dr. Dimpy Goyal M.O. CH, Lehra who has stepped into witness box as CW2. Nor if the version of the complainant is to be believed that he was given numerous soles blows on the various parts of his head including back, hand and feet. However, none of the injury which has been mentioned by the Doctor in the medical legal examination is found to have swelling. If there is external injury mark in the injury No.2, 3 and 4, the injury No.1 with regard to the reddish bruise but even in the injury No.1 there is no swelling. Now had the complainant been given serious beatings by the police officials as alleged by him, then at least there would have been some external marks the injuries along with the swelling. However, non-presence of the swelling and external marks itself creates doubt in the version of the complainant. The complainant has claimed that while he was in the custody he made a telephonic call to Harjinder Singh after which he got him released from the police station, Lehra. However, the complainant has not explained as from where he made the telephonic call. It is strange that on one hand the complainant was illegally lodged in the police station and

on the other hand, he was furnished with a mobilephone to make a call to Harjinder Singh. The version put forth by the complainant is not plausible and reliance can not be placed upon the same. The complainant has claimed that he remained in the hospital till 4.6.2012. However, there is no such evidence with the complainant that he remained admitted in the hospital till 4.6.2012 and then the complainant has moved application to the SSP, Sangrur on 5.6.2012. Now had the injuries been inflicted to the complainant, the complainant could have directly go to the higher officials of the police on 30.5.2012. However, no such effort was made by the complainant. The injuries on the person of complainant about which the mention has been made by CW2 is not of such nature that it could prevented the complainant from approaching higher officials and reporting the matter against the accused as mentioned in the complaint. From the challan Ex.C5, it is found that the same was cut by DSP Lehra and the vehicle of the complainant was impounded under Sec. 207 of Motor Vehicle Act. It is clear that the complainant was nourishing a grudge with regarding to impounding of his vehicle. In his entire complaint, the complainant has not mentioned anything about the presence of DSP when the challan was gut by him. There is no ground in the version put forth by the complainant, as such, no ground is made out for summoning of the accused. Accordingly, the complaint is dismissed. File be consigned to the record room.”

The petitioner, thereafter, preferred a revision before the Court of Sessions, which was also dismissed vide impugned order dated 03.05.2016.

Feeling aggrieved against the same, the petitioner filed the present petition before this Court.

Counsel for the petitioner has submitted that at the stage of summoning the accused persons only *prima facie* evidence is to be seen and therefore, the trial Court has wrongly dismissed the complaint. It is further submitted that the findings recorded by the trial Court that there is no eye-witness and no explanation is given from whose phone the complainant had given a call to CW4 – Harjinder Singh, is no ground to dismiss the complaint. Counsel for the petitioner has, thus, submitted that since *prima facie* evidence has come on record to summon the accused persons, both the impugned orders be set-aside and the matter be remanded back to the trial Court.

After hearing the counsel for the petitioner, I find no ground to interfere in the well-reasoned findings recorded by both the Courts below. The trial Court, on appreciation of the preliminary evidence led by the petitioner has held that the story put forward by the complainant that the proceedings were initiated by the respondent for not possessing the documents of his motorcycle is not believable as CW5, who has proved the challan of the motorcycle as Ex.C5, show that the same was done by the Deputy Superintendent of Police, Lehra as the vehicle was impounded under Section 207 of the Motor Vehicles Act. This fact is missing, both in the complaint as well as in the preliminary evidence where petitioner set up a case that respondent – police officer of rank of Assistant Sub-Inspector initiated the proceedings. The trial Court has also recorded a finding that the ocular version of the complainant regarding the manner of causing the injuries is not supported by the statement of CW2 – Dr. Dimpy Goyal. The complainant has stated that he was given multiple stick blows on

various parts of his body, which is not proved from the MLR as neither any swelling nor any external injury was found qua Injury Nos.2 to 4 and even qua Injury No.1, which is a reddish bruise and there is no swelling.

Therefore, in view of the well-reasoned orders passed by both the Courts below and also finding that there is neither any perversity nor any illegality in both the impugned orders, I find no merit in the present petition and the same is ordered to be dismissed.

15.10.2019
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No