

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3882-2016

Date of Decision: 7.11.2019

Santokh Singh and others

.....Petitioners

Versus

State of Punjab and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. G.S.Gill, Advocate for
Mr. Sant Pal Singh Sidhu, Advocate,
for the petitioners.

Mr. S.S.Cheema, AAG, Punjab.

Mr. Manu Loona, Advocate and
Ms. Navsangeet Sidhu, Advocate,
for respondent No.2.

Harnaresh Singh Gill, J.

Challenge in the present petition is to the order dated 12.09.2016 passed by the learned Additional Sessions Judge, Fazilka, whereby while setting aside the judgment dated 08.04.2016 passed by the learned Judicial Magistrate Ist Class, Jalalabad, the matter was remitted to the learned trial Court to decide the complaint afresh in accordance with law.

As would emerge from the facts of the case, respondent No.2-Preeto Bai had filed a complaint under Sections 452/323/324/148/149 IPC against the present petitioners with the allegations that the petitioners had filed a civil suit at Fazilka against the complainant's husband and her brother-in-law. The said suit was dismissed. Petitioner-Santokh Singh while admitting their possession had filed another civil suit in the Court at Jalalabad, which was pending. It was further

alleged that on 16.10.2013, at about 9.00 a.m., the respondent-complainant was sweeping her courtyard, when suddenly the petitioners had sneaked into her house by raising an exhortation (lalkara). At that time, they had been armed with sota (sticks) and they had uttered filthy language and abused the complainant. When the complainant tried to resist them, they told the complainant that she had occupied their land and they would get it back from the complainant forcibly. In the meantime, petitioner-Santokh Singh pushed the complainant in the paddy crop whereupon she fell down as a result of which, she had received an injury on her shoulder. The complainant further alleged that she had been given a stick blow by petitioner-Satnam Singh which hit her lower back, whereas petitioner-Rato Bai gave stick blow on the right buttock of the complainant. Petitioners-Jarnail Singh and Iqbal Singh pulled her by her hair. When she raised an alarm, complainant's brother-in-law Chiman Singh and one Krishana Bai came to the spot. They both had witnessed the occurrence but in the meantime, all the accused fled the scene while extending her the threats to kill. The complainant was removed to the hospital where she was medico-legally examined and her statement was recorded.

In the preliminary evidence, complainant herself appeared as CW-1 and reiterated the aforesaid version. She further examined Chiman Singh as CW 2 and Krishana Bai as CW 3. The other witnesses examined were formal in nature.

The learned trial Court after taking into consideration the entire evidence, found that the accused-petitioners were falsely implicated by the complainant for the reason that a civil litigation was pending between them. It was further found that admittedly, the ownership of the house wherein the complainant was residing was of the accused-petitioner, Santokh Singh and, thus, no offence of trespass could be made out. As regards the alleged injuries received by the complainant, it was found that there was no visible mark of any injury on her person nor the seat of such injuries could be pointed out. The allegation regarding her having received shoulder injury was found to be an improved version. Accordingly, the complaint was dismissed by the trial Court.

Aggrieved of the said order, the complainant filed a revision petition before the learned Sessions Court. Vide order dated 12.09.2016, as noticed above, the learned Additional Sessions Judge, Fazilka, set aside the order passed by the trial Court and remitted the matter to the trial Court for fresh trial.

Aggrieved against the order dated 12.09.2016, the accused-petitioners have filed the present petition.

Learned counsel appearing for the petitioners has vehemently argued that the learned Additional Sessions Judge, Fazilka, has erred in law in holding that at the time of passing the summoning order, the trial Court is not required to go into the merits of the case and the only thing which is required to be done is as to whether a prima facie case has been made out or not. It is further contended that the entire case of the

complainant is based on false facts and is a result of concoction and deliberations. It is, thus, contended that though there is no dispute regarding there being a prima facie case having been made out at the time of summoning, yet a perusal of the order passed by the trial court would make it apparently clear that there is no evidence worth considering or relying upon which may point out towards the guilt of the petitioners. The learned trial Court had rightly found that no medical evidence could be produced in support of the alleged injuries received by the complainant. Still further, the allegations of trespassing were found to be baseless for the reason that an owner while entering his own property cannot be said to be accused of committing a trespass.

On the other hand, learned counsel appearing for respondent No.2 has, while supporting the judgment passed by learned Additional Sessions Judge, submitted that while passing the order dismissing the complaint, the learned trial Court had committed grave error in law by discussing the merits of the case, whereas the right and lawful course was to find out a prima facie case. The discussion made by the learned trial Court, it is argued, was as if it were the final verdict of the court based on the evidence led by the respective parties. It is, thus, contended that the learned Additional Sessions Judge, Fazilka, had rightly set aside the order passed by the learned trial Court.

After hearing the learned counsel for the parties, I do not find any merit in the present revision petition and the same is liable to be dismissed.

It is indubitable that while passing the summoning order, the court taking cognizance of the offence is required to take into consideration as to whether a prima facie case has been made out or not. However, the facts of the present case clearly point out that there is no material on record which could substantiate the cause of making out even a prima facie case against the petitioner. The allegations contained in the complaint are to be supported by the evidence. In the instant case, the complainant had alleged that the petitioners had trespassed in her house and had also caused her injuries. However, she could not prove her ownership over the house in question. Rather, the said house was found to be the ownership of Santokh Singh. Secondly, the injury (shoulder injury) allegedly suffered by the complainant, could not be proved by way of any evidence and the same was found to be an improved version. The learned Additional Sessions Judge got swayed by the settled law regarding the prima facie case having been made out at the summoning stage. However, I am of the considered opinion that even if the situation be the same, it must be seen as to whether the allegations contained in the complaint are supported by the evidence so as to stand the judicial scrutiny.

The Hon'ble Supreme Court in M/s Pepsi Foods Limited Vs. Special Judicial Magistrate, (1998)5 SCC 749, has held to the following effect:-

“26. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the

complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

From the aforesaid it is clear that summoning power is to be exercised by the Court after examining the nature of allegations made in the complaint and the evidence both, oral and documentary in support thereof. I find that the learned trial Magistrate, had rightly taken into consideration the said aspects of the matter, while dismissing the complaint filed by the complainant.

In view of the above, the present petition is allowed.
The impugned order dated 12.09.2016 passed by the learned
Additional Sessions Judge, Fazilka, is set aside and that of the
trial Magistrate dated 8.4.2016 is restored and the complaint
filed by the complainant is dismissed.

(HARNARESH SINGH GILL)
JUDGE

7.11.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No