

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

**CRM-M No.37480 of 2019
Date of decision: 30.09.2019**

Ami Lal

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.S. Dhaliwal, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for setting-aside the order dated 11.7.2017 passed by the trial Court vide which while summoning the accused Nos.1 to 9, the trial Court refused to summon accused Nos.10 and 11 as well as the order dated 23.01.2019 vide which the revision filed by the petitioner was dismissed.

Brief facts of the case are that accused No.1 to 11 instituted a false criminal case under Section 325 IPC against the complainant. Upon this, a complaint was moved to the office of Prime Minister of India and Chief Secretary of Haryana. However, no action against the accused persons has been taken, so far. The accused have encroached upon killa No. 7/1 which is owned by the complainant and a civil suit is pending between the parties for adjudication. On 07.10.2010, the daughter-in-law of the complainant, Poonam was alone at home and at about 6.00 p.m., Dinesh, Bhola, Mohan, Shyam, Ramo, Shyamo and Sunder entered into the house and started abusing Poonam. In the meantime, the son of the complainant namely Bhagirath reached

home and thereafter, the accused gave slaps, fist blows and danda blows to him. Upon hearing the noise, Ajit, Ravi and Shiv Kumar came to save Bhagirath and Poonam. Thereafter, on 20.10.2010, Ranbir, Nanak and Agohi Ram threatened the complainant and his family members with dire consequences in which they stated that with the help of Mohan and Shyam and his sons, they will get the complainant killed in the accident. On 11.11.2010, the accused again fought with the complainant and his family members and broke open the main gate of his house. Despite so many occurrence, no police action was taken by the erring police officials.

The trial Court, thereafter, summoned the accused Nos.1 to 9 by passing the impugned order, however, recorded a finding that no sufficient evidence has come against accused Nos.10 and 11. The operative part of the impugned order dated 11.07.2017 passed by the trial Court, reads as under:-

“3. To substantiate the allegations against the accused, Bhagirath stepped into the witness box as CW1. He reiterated his version. Ajit was examined as CW2 and the complainant himself stepped into the witness box as CW3. The injured Poonam was examined as CW4. The medical account of injuries sustained by Bhagirath and Poonam was proved by Dr. Sachin Pahel, who was examined as CW5 and he tendered his affidavit Ex. CW-5/A and Ex. CW-5/B. Thereafter, learned counsel for the complainant closed the preliminary evidence after tendering the following documents:-

<i>Ex. C-1</i>	<i>Copy of complaint</i>
<i>Ex. C-2 & Ex. C-3</i>	<i>Postal receipt</i>
<i>Ex. C-4</i>	<i>Complaint</i>

- Ex. C-5 Photocopy of complaint dated 12.11.2010*
- Ex. C-6 Photocopy of complaint dated 18.11.2010*
- Mark-A Photocopy of forwarding letter dated
20.1.2011*
- Mark-B Photocopy of order*
- Mark-C Photocopy of order dated 21.07.2008*
- Mark-D Photocopy of inquiry report dated 19.08.2008*
- Mark-E Photocopy of appeal under RTI Act*
- Mark-F Photocopy of order passed by State
Information Commission Haryana dated
19.08.2009*
- Mark-G Application dated 20.04.2010*
- Mark-H Photocopy of order dated 02.04.2010 passed
in case titled Ami Lal etc. vs. Maan Singh etc.*
- Mark-I and Mark-J Postal receipt*

4. Upon cogitating the arguments and careful perusal of records, it transpires that the injured Poonam suffered a contusion on her right shoulder and injured Bhagirath suffered abrasion on right index finger along with contusion present on back. These injuries suffered by CW1 Bhagirath and CW4 Poonam have been duly proved by CW5 Dr. Sachin Pahal, who proved the MLR of injured witnesses as Ex.CW5/C and EX.CW5/D. Further, the complainant Ami Lal has reiterated the facts of his complaint while being examined as CW3. A perusal of the Complaint Ex.C1 shows that the same was also sent to IG., Rewari Range, SSP Palwal and SHO PS Camp Palwal, however, no action was taken upon the complaint Ex.CW1 EX.C4, Ex.C5 and Ex.C6 moved by the complainant.

*5. The ld. Counsel for the complainant has placed reliance upon **Gurdeep Kaur Vs. Balbir Singh and others 2005 (2) RCR Criminal** wherein it has been held by the Hon'ble Punjab and Haryana High Court that “for purpose of summoning the accused, Magistrate is not to*

*ascertain truth or false wood of complaint. The Magistrate has only to find out whether a prima facie case was made out as per averments made in the complaint and statements.” Further, the Hon'ble Apex Court has held in **S.W. Palanitkar Vs. State of Bihar 2001 (4) RCR (Criminal)** that “Magistrate to summon the accused if there is sufficient ground for summoning. The words “Sufficient ground” used under section 203 have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction.”*

6. The complainant has deposed that the accused no. 1 to 8 caused injuries to his son Bhagirath (CW1) and his daughter in law Poonam (CW4) on 07.10.2010. Further, on 20.10.2010, the accused No. 6 to 8 threatened the complainant that they in connivance with the other accused shall get him killed in an accident. Thereafter on 11.11.2010 the accused no. 1 to 5 with an intention to quarrel with the complainant again tried to trespass in the house of the complainant and broke main gate of the house of the complainant. This version of the complainant has been duly corroborated by the witness Ajit who was examined as CW2. However, there is nothing on record which could show that accused no. 10 and 11 in any way conspired with accused no. 1 to 9 in commission of the alleged crime. Hence, prima facie there are sufficient grounds to summon the accused no. 1 to 9 for the offence under sections 323, 427, 452 and 506 read with section 34 IPC. Let, he be now summoned to face trial under Sections 323, 427, 452 and 506 read with section 34 be issued for 05.08.2017 on filing of filing of PF, list of witnesses etc.”

Thereafter, the petitioner filed a revision before the Court of Sessions, which was also dismissed vide impugned order dated

23.01.2019.

Counsel for the petitioner has submitted that as per the statement of the petitioner, who appeared as CW-3, the allegation against the accused Nos.10 and 11 (respondents No.2 and 3 in the present petition) clearly make out a *prima facie* offence against them. It is further submitted that the allegations in the present complaint are that they have openly favoured the accused No.1 to 9.

After hearing the counsel for the petitioner, I find no ground to interfere in the well-reasoned orders passed by the both the Courts below.

Both the Courts below have recorded a finding that from the statement of CW-3, in which the allegations against accused No.10 and 11, who are the police officials are general in nature and the allegation against accused Nos.1 to 9 are that they have caused injuries to the complainant party as there was a dispute between them with regard to the possession of Killa No.7/1, which according to the complainant was owned by him and in this regard, a civil suit is pending between the parties.

In view of the above, finding no merit, the petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

30.09.2019

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No