

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

**CRM-M-32398-2017 (O&M)
Date of decision : 11.10.2022**

Joginder Kaur

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Dr. Mewa Singh, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

The present petition has been filed u/s 482 Cr.P.C. seeking quashing of the order dated 22nd of April, 2016 passed by Additional Sessions Judge, Ambala (Annexure P-4) whereby the revision filed by the petitioner was ordered to be dismissed.

2. Petitioner is a complainant. Complaint was filed for offences punishable u/s 323, 441, 452, 506, 148, 149 w.r.t. incident dated 17th of June, 2012. Trial Court at the stage of summoning found that the complaint was merely a counter-blast of FIR No.87 dated 18th of June, 2012 registered for the offences punishable u/s 323, 324, 326, 506 r/w Section 34 IPC, at Police Station Naggal wherein the complainant along with his family members were arraigned as accused(s). The Trial Court found that the complainant has not been able to make out a *prima facie* case as required under law to warrant summoning of the respondent-accused.

3. In revision preferred by the petitioner, Revisional Court affirmed the aforesaid order finding that there is nothing on record which would make out a *prima facie* case for summoning of the respondent-accused.

4. Ld. Counsel for the petitioner has contended that there was medical evidence brought on record of the complainant to show the injuries suffered by the petitioner. At the stage of summoning the Trial Court merely required to see as to whether *prima facie* case is made out or not. He asserts that the Trial Court erred in its approach while analyzing the evidence threadbare and holding that the same was not free from clouds of doubt. He points out to the statement made by Investigating Officer in the FIR matter wherein he admits the occurrence of 17th of June, 2012. He, thus, submits that once the occurrence was admitted the findings recorded by the Trial Court cannot be sustained.

5. I have heard Ld. Counsel for the petitioner and have gone through the records of the case.

6. Trial Court while dismissing the complaint filed by the petitioner vide impugned order held as under :-

“5. The complainant has alleged that the accused in connivance with each other caused injuries on her person and on the person of her husband Balwinder Singh and her son Gurdeep Singh. Nevertheless, perusal of evidence on record reflects that the MLR Ex.PW3/A of complainant Joginder Kaur bears simple

injury which pertains to 17.5.2012. Further, perusal of complaint reflects that the complainant in her complaint as well as in her testimony has narrated the alleged incident to be of 17.06.2012. Further, OPD card of Balwinder Singh Ex.CW2/C reflects that Balwinder Singh was medically examined on 28.06.2012. Therefore, there is a material discrepancy in the testimony of complainant regarding the alleged incident and the medical evidence is in variance with the ocular testimony of complainant and alleged injured Balwinder Singh which is a relevant factor in shrouding the case of the complainant. Further, the complaint pertains to 27.9.2012 whereas the alleged incident as per the complaint is of 17.06.2012. Thus, there is a delay of approximately three months in filing the complaint. It is assertion of the complainant that she approached the police, but the police officials did not take any action against the accused. In support of this assertion, the complainant has placed on record application to police Ex.CW2/A and Ex.CW2/D. Nevertheless, such applications does not bear any receipt by the police station. No DDR has been placed on record by the complainant to suggest that she ever approached to the police officials regarding the alleged incident. Further, admittedly an FIR No.87 dated 18.6.2012, under Sections 323, 324, 326 and 506 read with Section 34 IPC was lodged against the complainant in P.S. Naggal. Hence, there is a possibility that the complainant has sustained certain minor injuries which is even not proved otherwise, in the alleged incident and the complainant has filed the present complaint as a counter blast of that FIR lodged against her. It is well settled that the complainant has to make out a prima-facie case against the accused person at the time of summoning of accused which the complainant has miserably failed.”

7. In revision it was held that the respondent-accused cannot be

ordered to be summoned merely for the reason that a cross-case is pending against the complainant.

8. While arguing the matter, Ld. Counsel for the petitioner has referred to the testimony of IO in the cross-case against the complainant-petitioner. However, he has not been able to show as to how the medical evidence can be related to occurrence in question in view of the infirmities pointed out by the Trial Court. Ld. Counsel is right to contend that at the stage of summoning Trial Court is not required to analyze the evidence. However, the least the Trial Court is required to see is as to whether the evidence brought on record by the complainant prior to summoning does support the essential ingredients of offence.

9. Apart from relying upon the alleged testimony of IO in FIR case, Ld. Counsel for the petitioner has not been able to point out any evidence on record led in the complaint case which points out towards a *prima facie* case to summon the accused.

10. In the present case, Trial Court found that the medical evidence brought on record by the petitioner to substantiate the allegations levelled in the complaint was not even relatable to the incident alleged. Thus, Trial Court instead of mechanically summoning the accused rightly held that the medical evidence on record being not relatable to the incident, the allegations levelled in the complaint itself were discrepant and deficient to constitute the offence.

11. In view of the aforesaid discussion, the present petition is found to be without merit and is thus ordered to be dismissed.

October 11, 2022
Dpr

(PANKAJ JAIN)
JUDGE

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