

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-40781-2017 (O&M)
Date of decision: 21.12.2022

CHANDERHASS

....Petitioner(s)

Versus

STATE OF HARYANA AND ORS.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ranvijay Singh, Advocate for
Mr. Kunal Muthreja, Advocate
for the petitioner.

Ms. Aditi Girdhar, AAG Haryana.

Mr. Manjeet Singh, Advocate
for respondent Nos.2 to 5.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 CrPC for quashing/setting aside order dated 03.04.2017, Annexure P-8 passed by learned Additional Sessions Judge, Bhiwani dismissing the revision preferred by the petitioner and order dated 19.08.2016, Annexure P-6 passed by learned Sub-Divisional Judicial Magistrate, Loharu whereby the complaint filed by the petitioner under Section 203 CrPC at the summoning stage had been dismissed.

Facts put in brief as per the complaint filed against respondents Munni wife of Ramphal, Birmati wife of Dalbir, Ramphal @ Rajphal, Dalbir and Rattan Singh, ASI No. 73/H at present Police Station Loharu by the complainant-petitioner are that complainant alongwith Lamberdar Ram Singh, Chowkidar Ramphal and his brother Karan Singh went to the house of accused Ramphal with regard to tampering of the boundary of the land. Accused Ramphal got angry and started abusing, also said that he will teach a lesson to the complainant and ought

hold of his neck. In this regard, a case under Section 107 and 151 Cr PC was lodged in police station. On 07.05.2014, accused-respondents sharing common intention at about 6:00-7:00PM came to the fields of the complainant and tried to damage the sprinkling pipe line of the complainant. On resistance, respondent Nos.2 and 3 tried to cause injuries with an iron pipe. The complainant-petitioner and his wife went inside their house to save themselves. Thereafter, respondent Nos.2 and 3 sat outside the house of the complainant and threatened, a telephone call was made to police. The complainant went to the house of Badri Hawaldar to save them and from there they went to the Police Station Loharu.

In support of the complaint the complainant had examined himself as CW1, Smt. Vedho Devi examined as CW2 and Vinod Kumar Photographer as CW3. Learned Magistrate sought report under Section 202 Cr.P.C.

After having heard, the complaint was dismissed by learned Sub Divisional Judicial Magistrate with the observations that the contention of complainant does not inspire confidence because the incident pertained to 07.05.2014, whereas the complaint was moved to police on 27.04.2014 and as to how the complainant had given a compliant prior to the alleged incident. As per report under Section 202 Cr.P.C., the present complaint is filed as a counter blast to the FIR No. 106 dated 08.05.2014 and this complaint was filed on 28.05.2014.

Aggrieved petitioner filed revision petition, which was dismissed by the learned Additional Sessions Judge, Bhiwani.

Hence the present petition.

Learned counsel for the petitioner submits that the Courts below have wrongly dismissed the complaint filed by the petitioner. He contends that the report under Section 202 CrPC had not been discussed by the both the Courts below and only a reference has been made thereto. He submits that as per the

settled law, the learned Magistrate is not required to follow the report under Section 202 CrPC but to apply its own mind to examine the genuineness of such report. He further submits that once the issue raised by the petitioner before the learned Revisional Court was found to be genuine, a finding was required as to whether the criminal complaint Ex. C-9 and receipt Ex.C-10 pertain to the different incidents.

Learned State counsel as well as learned counsel for respondent Nos.2 to 5 submit that both the Courts below have rightly passed the orders and the impugned orders do not warrant any interference.

Heard.

It is apposite to refer to order dated 19.08.2016, passed by learned Sub Divisional Judicial Magistrate, Loharu, the relevant part of which reads thus:-

5. In the present complaint, the main contention raised by the counsel for the complainant does not finds force as from the perusal of the complaint it is clear that the complainant has mentioned that other case FIR No.106 dated 8.5.2014 has been registered against the present complainant and the present complaint has been filed on 28.5.2014, after lodging of case against him. It appears that the present complaint has only been filed a counter blast to that FIR lodged against the complainant. complainant is also The version of falsified from the perusal of the complaint receipt Ex.C10, which was Loharu, in issued by the Police Station which the date of giving complaint by the complainant is 27.4.2014 but the alleged incident is of 7.5.2014 and how it is possible that complainant has given the complaint Police Station Loharu before the alleged incident. Moreover, from the perusal of the report under section 202 Cr.P.C., it is clear that the present complaint has only been filed as counter blast to that FIR. It is also settled law that judicial process no doubt should not be an instrument to oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass another person needlessly. In this regard reliance can be upon the case titled as State of Andhra Pradesh Vs. the in Arvpallyvenkanna AIR 2009 SC 1863.

6. Thus, keeping in view the above said discussion, this

court comes to the conclusion that in the present complaint, there is no sufficient material to summon any of the accused. Hence, the present complaint is hereby dismissed under section 203 Cr.P.C. File be consigned to the record room after due compliance.

Likewise, a reference to the operative part of the order dated 03.04.2017, passed by learned Additional Sessions Judge, Bhiwani dismissing the revision petition filed by the petitioner is required to be made, which reads thus:

7. After having heard, learned counsel for the revision-petitioner and learned Public Prosecutor for the State-respondent at length, this Court has come to the conclusion that it is a case wherein none of the person from complainant side received injuries. It is also an admitted facts that against revision-petitioner an FIR No. 106 dated 08.05.2014 was lodged for commission of offences under Section 354, 506, 323, 294, and 509 of IPC. As per report under Section 202 Cr.P.C., it surface that the complaint filed was false. The complainant Chander Hass was involved in other criminal cases. The alleged eye-witnesses namely Ramphal Chowkidar, Mainpal and Surajbhan Ex-Sarpanch deposed that no such occurrence has happened.

In so far as, act of the accused party attributed to the effect that they chased the complainant party while lifting pipe in hand is not probable. The length of pipe used for sprinkling system is 20 feet having a good length and weight. It does not appeal to reason that the accused Smt. Munni and Smt. Birmati will carry the pipe from the field to house of accused and may cause any injuries. In the light of aforesaid fact coupled with lodged FIR against present complainant, this Court find concurrence with the finding of learned trial Court. The finding given by learned trial Court as mentioned Supra does not suffer from any irregularity, illegality or incorrect appreciation of facts.

This Court is also of the considered opinion that the present complainant moved complaint on 27.04.2014 in which there was no material to constitute an offence and therefore, when grave offence is alleged to be committed against the complainant, the complainant would have reported the matter to police on 07.05.2014. In order to substantiate fact of occurrence no such report has been produced.

8. Consequently, the present revision petition could not succeed and hence, the same is hereby dismissed. Copy of this order alongwith lower Court record be sent to the Learned Trial Court. File be consigned to the record room after due compliance.

The petitioner having already availed of his remedy by filing a

criminal revision petition, though unsuccessfully before the learned Additional Sessions Judge, Bhiwani, as such this petition as per Section 397(3) Cr.P.C. would amount to a second revision petition under the guise of petition under Section 482 Cr.P.C. Hon’ble The Supreme Court of India in the cases of **Krishnan vs. Krishnaveni and another** 1997(4) SCC 241, and **Shakuntala Devi and others vs. Chamru Mahto and another**, 2009(2) SCC (Cri) 8, held that in appropriate cases in order to meet the ends of justice or to prevent abuse of the process, the High Court is preserved with inherent power, which should be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of the introduction of sub-section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed and in special cases the bar under Section 397(3) could be lifted.

Having considered the judgments of the Courts below and the submissions of the learned counsel for the parties, there appears to be no special circumstance in this case, as required as per the law laid down in the judgments referred to above, which could persuade this Court to grant relief in the present case, in exercise of the inherent power under Section 482 Cr.P.C.

In view of the foregoing, this Court finds no illegality or perversity in the orders passed by the Courts below warranting any intervention. As such, the present petition *sans* merit and is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

December 21, 2022

S.Sharma(syr)

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