

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(129)

CRM-M-31960-2022
Date of Decision: 25.07.2022

Mithlesh

--Petitioner

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Y.D. Kaushik, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 482 Cr.P.C praying for quashing of order dated 19.7.2019 (Annexure P-2) passed by learned JMIC, Faridabad and order dated 5.5.2022 (Annexure p-4) passed by learned Addl. Sessions Judge, Faridabad in the criminal revision filed by the petitioner.

Learned counsel for the petitioner contends that the petitioner before this court is the aggrieved complainant. As per facts of the case there is a house of Smt. Pushpa wife of Sh. Aidal Singh. Pushpa had constructed a ramp of her house and thus elevated the height of the common passage due to which the waste water from her house started accumulating near the door of the house of complainant. A daily inconvenience was caused to the complainant which was brought to the notice of Pushpa, however, the same gave rise to a dispute. The matter was brought to the notice of the police, however, no action was taken on the same. On 12.6.2017 the complainant started raising construction of the ramp so as to stop the inflow of the water from the house of Pushpa. This ramp was broken by Pushpa and her family. When the complainant resisted

then Pushpa along with co-accused came and started beating the daughter of complainant namely Nisha and sons Nishant and Naveen. The complainant tried to rescue them. The incident was recorded in the CCTV Camera also. On reporting the matter to the police they registered a case under sections 107, 150 Cr.P.C against the daughter of the complainant namely Neha, who was not even present at the time of occurrence. As the police did not take rational action, the complainant lodged the present complaint under sections 323, 325, 354, 452, 148, 149, 506 IPC against the accused.

Learned counsel for the petitioner submits that the complainant led the preliminary evidence and proved the case against the accused, however, the learned Trial Court as well as the revisional court have drawn a wrong conclusion in summoning only accused Pushpa under sections 323 and 506 IPC. He submits that in the preliminary evidence the complainant/petitioner examined herself as CW-1 besides her husband Rajesh Kumar as CW-2, Const. Virender Singh as CW-3 and Manju, Record Incharge as CW-4. However, learned Trial Court summoned only respondent no.2 namely Pushpa only for the offences under sections 323 and 506 IPC. Counsel submits that there was evidence against rest of the accused for said offences, however, the conclusion drawn by the learned Trial Court is totally against the evidence on record. It is further submitted that the petitioner aggrieved by the same filed a revision petition before the learned Addl. Sessions Judge, however, the revisional court also fallen in error and misread the evidence on record and illegally dismissed the revision. Counsel submits that both the courts have not taken in to account the oral evidence produced on record as well as the CCTV footage

produced. Counsel submits that case of the petitioner is also supported by the medical evidence. He submits that both the courts below have fallen in error and the impugned orders deserve to be modified by summoning all the accused persons for the offences under which the complaint was filed.

I have heard learned counsel for the petitioner and perused the record made available.

From the perusal of the record, it is apparent that the petitioner/complainant examined herself as CW-1 in preliminary evidence, her husband Rajesh Kumar as CW-2, Const. Virender Singh as CW-3 and Manju Record Incharge as CW-4.

From the conjoint reading of the preliminary evidence, it is apparent that the allegations were specifically levelled only against accused Pushpa and not qua the other accused who were made party to the complaint. The revisional court has reappreciated the summoning order of the Trial Court wherein the relevant paras 5 and 6 have been reproduced hereunder:-

“5. From the evidence of the complainant and other witnesses i.e. CW2 Rajesh Kumar, CW3 Ct. Virender Singh and CW4 Manju, Record Incharge, its allegations are specifically only levelled against the accused no.1 Pushpa and not the other accused who are made party to this complaint. Further, in the plaint itself, it is clearly written that the alleged incident happened over the construction of a ramp, hence, the incident happened outside the house of complainant. Hence, the offence under section 452 of IPC is not made out. Further, the complainant is levelling allegation against the accused under section 354 IPC stating that the accused persons outraged the modesty of her daughter but her daughter Nisha

did not come present before the court to depose qua these allegations. Hence, the allegation under section 354 of IPC is not made out. Further, from the perusal of MLR, allegations under section 323 of IPC are only prima facie proved and not under section 325 of IPC. In Kanti Bhandra Shah Vs. State of West Bengal AIR 2000(SC) 522; 2000(1) RCR (CrI) 407 it has been held that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.

6. *From complete crux of the matter, documents available on case file and evidence on oath of witnesses, this court is of the opinion that allegations only under sections 323 and 506 IPC are prima facie proved against the accused-Pushpa. Therefore, the accused-Pushpa is ordered to be summoned to face trial punishable under sections 323, 506 IPC accordingly, on filing of PF, copy of complaint etc. for 7.09.2019.”*

As the occurrence had taken place outside the house so the offence under section 452 IPC was not made out. So far as section 354 IPC is concerned that was alleged against the daughter of the complainant but she did not come present to the court to depose qua the same and from the MLR produced only the offence under section 323 IPC was made out. Thus, the Trial Court has rightly summoned the only accused Pushpa for the offence under sections 323 and 506 IPC.

It is settled law that the higher court should not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence. The court ought not to

interfere with concurrent finding of fact unless it is established that the finding is perverse, it being such as no reasonable person could arrive at even if the evidence was taken at its face value or the finding is based on inadmissible evidence which if excluded from vision would negate the prosecution case. In this regard reliance can be placed on ***Dalbir Kaur & others Vs. State of Punjab (1976) 4 SCC 158*** and ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujrat (1983) 4 SCC 158***.

At the time of summoning, the courts are not supposed to weigh the evidence only but also to see the prima facie case from the material produced on record. Both the courts below have given a concurrent finding regarding the summoning of the respondent Pushpa under section 506 IPC. Counsel for the petitioner/complainant has failed to satisfy this court that the courts below have committed any illegality in passing the impugned orders.

In the overall facts and circumstances of the case, this court is of the opinion that there are concurrent finding of both the courts below. This court does not find any perversity in the findings arrived at. Thus the petition being devoid of any merit is dismissed.

(RAJESH BHARDWAJ)
JUDGE

25.07.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No