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2023:PHHC:166353

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8622-2020 (O&M)

Date of decision : 25.01.2023

Sushil @ Sheel @ Sunil and others

...Petitioners

Vs.

Ajmer Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Abhinav Aggarwal, Advocate for the petitioners.
Mr. Bhupender Singh, DAG, Haryana.

DEEPAK MANCHANDA, J.(Oral)

Petitioners have filed this second petition under Section 482 Code of Criminal Procedure for quashing of the criminal complaint bearing No.524-1 of 2017 dated 26.09.2017 filed under Sections 147, 148, 149, 307, 303, 324 and 506 of Indian Penal Code, 1860 and Sections 25 and 27 of Arms Act, 1959 as well as summoning order dated 04.12.2018 (Annexure P-5) passed by JMIC, Hansi, whereby petitioners were summoned to face trial for the offences under Sections 147, 148, 307, 323, 324, 326 read with Section 149 IPC and Sections 25 and 27 of Arms Act.

The facts as noticed by trial Court, Hansi are as under:-

“Case of the complainant is that on 26.07.2016, at around 5:00 PM., he was returning to his house from his fields and when he reached in front of the house of Baljeet S/o Mange Ram (since deceased), Rajbir S/o Chanda, cousin brother of the complainant, was standing in the street. All of sudden, Baljeet having a revolver in his hand, accused Sumit S/o Satbir carrying a 12 bore gun, accused Sushil S/o Jainarain carrying a gandasi, accused Vijender S/o Sajjan Singh, having a lathi in his hand, accused Vikas S/o Inder, carrying a gandasi, accused Sunita wife Baljit, carrying a bhala (dagger), accused Nancy, Neha

daughters of Baljeet, having lathi in their hand, accused Narender S/o Sunder Singh carrying lathi and accused Dalbir S/o Surajbhan (since deceased) carrying a gandasa, came out of the house of Baljeet and exhorted that the complainant be not spared. Accused Bijender and Sushil instigated and provoked Baljeet to shoot the complainant dead, whereupon Baljeet opened firing at the complainant. Two fires were shot, out of which, one attracted in the abdomen, while second on the thigh of the complainant. Hue and cry was raised. On hearing noise. Bedhadk S/o Bharat Singh, Sonu S/o Karambir, Om Singh S/o Bharat Singh, Rajbir S/o Chanda Singh, Virender S/o Khajan Singh, rushed at the spot to rescue the complainant. Accused Sumit also shot fired from his gun. Complainant and others. anyhow rescued themselves by lowering down on the road. Accused side also sustained injuries when companions of the complainant retaliated with lathi and broken bricks and stones from the spot. Thereafter, accused Narender hurled a lathi, which attracted on the back of Om Singh S/o Bharat Singh. A gandasi blow by accused Sushil and lathi blow by accused Bijender attracted on the head of Sonu. Vikas gave a gandasi blow on the head of Bedhadk. Accused Sanjay gave lathi blow on the left hand, while Vikas gave another gandasi blow on the right hand of Bedhadk. Accused Nancy and Neha also caused injuries with lathi. Complainant was empty handed and when in order to save himself rushed towards accused Sunita wife of Baljeet and snatched dagger from her hand and attacked on Baljeet Others (companions of complainant) also tried to rescue themselves and in their efforts of self-defence, Dalbir, Sunita and Sushil sustained minor injuries Hue and cry was raised. Many villagers reached at the spot Accused side fled from the spot alongwith their weapons Complainant and other injured, which included Bedhadk, Om Singh and Sonu were taken to Civil Hospital, Hansi, by Rajbir and other family members of complainant Complainant and Bedhadk were in a critical condition. Therefore, they were referred to Agroha Medical College Injured Sonu and Om Singh were referred to Civil Hospital, Hisar, where they were provided medical treatment. Later-on complainant got to know that an FIR No.312, dated 27.7.2016, under Sections 148, 149, 323, 452, 302, 506 IPC was registered against the complainant and 26 persons of his family.”

Learned counsel for the petitioners contends that the injuries inflicted to the respondent on account of self defence by Baljit Singh (since deceased). He further submits that respondent has submitted two different versions before this Court and before the trial Court about the wound by two bullets. He submits that the offence punishable under Section 307 IPC is not made out against the petitioners as Baljit Singh (since deceased) was having a

licensed revolver and he in self defence fired gun shot on the respondent. According to the learned counsel for the petitioners, after the police investigation, all the petitioners have already been declared innocent by the police, therefore, he prays for quashing of the criminal complaint (Annexure P-4) as well as summoning order (Annexure P-5).

Vide order dated 23.11.2022, learned State counsel sought time to verify the status of the case pending before the trial Court. Today, he while referring to the impugned order dated 04.12.2018 submits that the trial Court has rightly summoned the petitioner, where from evidence *prima facie* the offence under Sections 147, 148, 307, 323, 324, 326 read with Section 149 IPC and Sections 25 and 27 Arms Act, 1859 is made out.

I have heard the learned counsel for the parties and have gone through the case file.

After going through the impugned order dated 04.12.2018 (Annexure P-5), where the trial Court has observed that when police did not take any action against the petitioners, respondent/complainant had filed a petition i.e. CRM-M-38839-2016 before this Court and the same was disposed of vide order dated 14.07.2017 after observing that since *prima facie* police was not willing to register and investigate the cross case on the allegations of the respondent/complainant, therefore, the liberty was granted to him to avail appropriate remedy before the Illaqa Magistrate by filing a private complaint.

In order to establish *prima facie* case, the respondent/complainant appeared as CW-1 along with other witnesses, from CW-2 to CW-12 and relied upon the documentary evidence i.e. Exhibits C-1 to C-27, and after examining the same, the trial Court observed that inspite of admitted occurrence, wherein

26 persons from the respondent/complainant side were booked as accused persons under Sections 148, 149, 323, 452, 302 and 506 IPC. However, no case was registered on the application of respondent/complainant. It was further observed that from the medical evidence on record, the injuries on the respondent/complainant's side were proved from documentary evidence, which includes treatment records of Ajmer Singh (CW-1), Sonu (CW-2) and Bedhadk (CW-3). The injuries on the persons of complainant/CW-1 Ajmer Singh and CW-3 Bedhadak were grievous in nature, whereas unfortunately two persons of accused side admittedly lost their lives due to injuries sustained in the said occurrence. It is also observed that without there being a cross version on record question of aggressiveness, grave provocation and use of excessive criminal force cannot be determined at threshold. The trial Court recorded its satisfaction before summoning the petitioners on the basis of medical evidence as well as on the other strong and cogent material available on record and had rightly exercised its power of summoning. For forming *prima facie* opinion substantiating specific inculpatory role of the petitioners by summoning them as additional accused and to achieve its satisfaction, it was recorded in the order dated 04.12.2018 that from the medical evidence on record, injuries proved on the persons of the respondent/complainant and Bedhadak were multiple and grievous in nature, whereas the injuries on the person of Ajmer Singh are reported to be caused by gun-shot and on the basis of forming opinion that *prima facie* offence under Sections 147, 148, 307, 323, 324, 326 IPC read with Section 149 IPC and Sections 25 and 27 of Arms Act is made out and summoned the petitioners.

Keeping in view the aforementioned explained circumstances as

well as after going through the contents of the findings given in the impugned vide order dated 04.12.2018, this Court does not find any merit in the present petition and is not inclined to exercise its power under Section 482 of Cr.P.C.

The present petition being devoid of merits, is hereby dismissed.

(DEEPAK MANCHANDA)
JUDGE

25.01.2023
vanita

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