

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24798-2017

Date of Decision: 08.02.2023

Ashok Sharma

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Peeush Gagneja, Advocate for the petitioner
Mr. Ashok Kumar Sehrawat, DAG Haryana
Mr. HS Jugait, Advocate for respondents No.2 to 8
Mr. Deepkaran Dalal, Advocate for respondent No.9

Sandeep Moudgil, J.

The petitioner seeks quashing of the orders dated 13.03.2015 passed by Addl. Chief Judicial Magistrate, Palwal (Annexure P1) and order dated 21.02.2017 passed by Addl. Sessions Judge, Palwal (Annexure P3) vide which the complaint filed by the petitioner against the accused persons i.e. respondents No.2 to 9 for commission of offence punishable under Sections 364/364A,365,395,379,323,452,506,341,344,120B IPC, has been dismissed.

The petitioner court vide order dated 13.03.2015 dismissed the complaint filed by the petitioner observing that despite six effective opportunities given to the petitioner to lead pre-charge evidence, neither he examined himself completely nor he examined any other witness. No document has been placed on record and once the petitioner did not appear for his further cross-examination, so his examination in chief can also not be led and as such there is no pre-charge evidence in favour of the complainant.

The petitioner filed appeal before the Addl. Sessions Judge, Palwal and vide judgment dated 21.02.2017, the same has been dismissed.

Learned counsel further argued that the impugned judgments are not sustainable in the eyes of law and as such the same is false and fictitious and based upon concocted story and are liable to be set aside. He argued that the judgments passed by courts below are against the facts on file and evidence produced on file. On 3.3.2015, petitioner came present before the petitioner Court and stepped into the witness box in pre-charge evidence, but as the court time was over, his cross-examination was deferred and the case was fixed for 7.3.2015. On 7.3.2015 he was present but the Advocates of the parties were not present on account of death of Shri Mukesh Sorout, Advocate and the matter was fixed for 9.3.2015. On 9.3.2015 he came present in the morning before the learned petitioner court and the case was fixed to produce the evidence after lunch. He was beaten by some persons in the premises of the court and to take the medical treatment he left the court premises and this information was told to his counsel and who informed the petitioner court and the matter was fixed for 11.3.2015. On 11.3.2015 he was admitted in Shivalik Hospital, Ballabgarh and an application for exemption of his personal appearance was moved by his counsel before the trial court and the case was fixed for 13.3.2015. On 13.3.2015 he was not in a condition to appear before the trial court and hence he moved an application alongwith medical due to this reason he could not produce the evidence before the trial court. But the trial court without going through the facts and circumstances dismissed his complaint and discharged the private respondents.

Reply dated 26.10.2017 has been filed by the official respondent No.1 stating that after verification of facts from SHO, Palwal, neither any

application nor any complaint was given by the petitioner, hence no enquiry or investigation was conducted.

Having heard learned counsel for the parties, this Court does not find any illegality or perversity in the order/judgment passed by both the courts below.

The courts below rightly observed that there are 13 accused which are attending the court on each and every date. A perusal of the list of the witnesses also shows that there are 12 witnesses. Witness No.2&6 Anil and Ashok Sharma are brothers of the petitioner and witness No.3 Maya Devi is the mother of the petitioner but despite availing numerous opportunities, the petitioner did not examine any witness in pre-charge evidence though, he himself stepped into the witness box as CW1 but did not appear in the witness box for his cross-examination.

A total of six effective opportunities were given to the petitioner to lead pre-charge evidence, but neither he examined himself completely nor he examined any other witness. No document has been placed on record and once the petitioner did not appear for his further cross-examination, so his examination in chief can also not be led and as such there is no pre-charge evidence in favour of the petitioner. Thus, the courts below were justified in dismissing the complaint and discharging the respondents No.2 to 9. No fault can be found with the well reasoned order/judgment passed by both the courts below.

Dismissed.

08.02.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No