

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 37694/2015

Date of decision: 07.08.2023.

Desh Raj

.....Petitioner

Vs.

Radhey Shyam and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikas Kumar, Advocate for the petitioner.

Nidhi Gupta, J.

Prayer in this petition under Section 482 Cr.PC is for setting aside the order dated 3.7.2012 (Annexure P-2) passed by JMIC, Faridabad dismissing the complaint filed by the petitioner under Sections 323, 325, 452, 307, 506, 379, 354 IPC and 25/54/59 of the Arms Act; as well as order dated 27.7.2015 (Annexure P-3) passed by Addl. Sessions Judge, Faridabad dismissing the revision preferred by the petitioner against order Annexure P2.

Present revision petition was filed on 3.11.2015. Since then, the matter was taken up on 10 occasions, however, either counsel for the petitioner was not present, or request for an adjournment was made on his behalf.

Facts giving rise to this petition are that petitioner filed a complaint dated 5.2.2011 under Sections 323, 325, 452, 307, 506, 379, 354 IPC and 25/54/59 of the Arms Act wherein it was alleged that due to a monetary dispute between the petitioner and respondent no.7 herein,

respondent no.7 along with respondents No. 1 to 8 herein came to the shop of complainant on 29.12.2010 and misbehaved with the mother of the petitioner. In this regard mother of the petitioner submitted a complaint dated 29.12.2010 to DSP concerned, however, no action was taken on the same. Thereafter on 26.1.2011 at about 7 pm when the petitioner/complainant was in his shop when accused no.1 to 8 accompanied by 20 gundas entered into the shop of the complainant and asked him to vacate the shop. As the police intervened the accused were restrained from getting the shop vacated. However, on the same day i.e. 26.1.2011 when the complainant was closing his shop the accused came again along with gundas and accused/respondent no.1 Radhey Shyam fired a shot from a country made pistol which hit the shutter of the shop. Second shot also hit the shutter of the shop. At this time Ram Phool son of Sukhram, cousin of the petitioner reached there and raised an alarm due to which a lot of people gathered there and rescued the petitioner. Thereafter, petitioner made a complaint on 27.1.2011 in this regard to the Commissioner of Police, Faridabad against the accused persons. As no action was taken in the matter, petitioner filed the present complaint (Annexure P-1) before the Id. JMIC, Faridabad praying therein that the abovesaid complaint be sent to PS Sadar Ballabgarh under Section 156(3) with a direction to the SHO to register a case against the accused persons and proceed against them in accordance with law. The said complaint was dismissed by Id. JMIC Faridabad vide impugned order dated 3.7.2012 (Annexure P-2), and revision petition preferred by the petitioner against the said order has also been dismissed by Id. Addl. Sessions Judge vide impugned order dated 27.7.2015 (Annexure P-3). Hence, present revision petition.

Ld. Counsel for the petitioner submits that the ld. Courts below were in error in holding that no case under Section 323, 325 and 307 IPC were made out. It is contended that it is well settled proposition of law that to attract the provisions of Section 307 IPC just intention or intent and not the injury inflicted is deciding factor for attracting the application of Section 307 IPC; and that an intent coupled with some overt action in execution thereof is sufficient to attract provision of Section 307 IPC, therefore, the applicability of Section 307 IPC on receipt of an injury by the victim is not a pre-requisite. Ld. Counsel further submits that there is inherent fallacy in the impugned order inasmuch as under Section 307 IPC the matter could not have been investigated by the police. It is submitted that as per first proviso to Section 202 Cr.PC, matter was required to be exclusively tried by Court of Sessions. It is submitted that therefore, the reliance placed by the ld. Trial court upon the report submitted by the police under Section 202 Cr.PC renders the impugned orders unsustainable.

Section 202 Cr.PC reads as under:-

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.

Heard Id. Counsel for the petitioner.

The Id. Judicial Magistrate, while dismissing the complaint has observed in paras 4 and 5 of its judgment as under:-

"4. For making the prima facie case under Section 323 and 325 of IPC which are relating to punishment for voluntarily causing hurt and punishment for voluntarily causing grievous hurt are not made out as the complainant has failed to place on record any evidence which would support his averments that he was caused hurt or grievous hurt by the accused. Section 307 of IPC is also not made out which is relating to attempt to murder. He has also failed to place in record any evidence or incriminating material which would prima facie make out a case under Section 307 of IPC. Also, the provision of Section 354 is not made out against the accused as CW-2 Savitri, mother of complainant, has not been able to mention any specific circumstance which could be covered under Section 354 of IPC. The provision of Section of 452 of IPC which deals with house trespass after preparation for assaulted and wrongful restrained is also not made out against the accused in the present case. The provision of Section 379 of IPC which deals for punishment of theft is also not made out as the complainant has been unable to place on record any convincing material which could attract the provision of Section 379 of IPC. Similarly, Section 506 of IPC is also not attracted as no clear mention of any specific words which were purported by the accused has been mentioned either in the complaint or in the statement of the witnesses examined in the court. The provision of Section 25/54/59 of Arms Act is also not attracted as there has been no convincing material placed on record which would prima facie make out the case under Section 25/54/59 of Arms Act.

5. In M/s Pepsi Foods Ltd, Vs. Special Judicial Magistrate, 1998 (Cr. L.J) 1 it has been clearly laid down that summoning of an accused in a criminal case is a serious matter. It is not that complainant has to bring only two witnesses to support his allegations to set criminal law in motion. The court has to satisfy itself by scrutinizing the evidence brought on record carefully, to see whether a prima facie case is made out against the accused to

summon him. Same view has been reiterated by the Hon'ble Punjab and Haryana High Court in Arun Jha S another Vs. State of Haryana & another (1) 2006 CCJ 527".

The Id. Addl. Sessions Judge, Faridabad while dismissing the revision petition filed by the petitioner has held as under: -

"10. Allegations qua the incident of 29.12.2010 are quite general in nature. However, the victim of incident dated 29.12.2010 herself appeared as CW2 but failed to disclose any specific act done by accused persons against her. In absence of any specific allegations, the learned trial court rightly rejected the complaint.

So far as allegations of Sections 323, 325 and 307 IPC are concerned, the complainant has not produced any documentary evidence to this effect. Moreover, it is alleged that on 26.1.2011, accused-respondent Radhey Shyam fired two-gun shots. One hit in the mid of shutter and second at the top of shutter. This shows that at the time of incident the shutter/shop was closed. It is not the case of complainant that he was attacked when the shop was closed. Moreover, report under Section 202 Cr.P.C. revealed that no bullet shot was fired on the complainant. The complainant did not report this incident immediately rather this was reported with incident of 29.1.2011. There is no satisfactory explanation to this delay. Considering all these facts together there is no substance in the allegations of complainant. Hence, the learned trial court rightly rejected the complaint".

Ld. Counsel for the petitioner is unable to dispute the concurrent findings of facts recorded by the Courts below. Perusal of the above findings also reveals that the Id. Courts below have categorically recorded that no case was made out against the accused even under Sections 323 and 325 IPC, let alone under Section 307 IPC. In such a situation, I find no ground is made out to interfere in the impugned orders.

Dismissed.

07.08.2023.
Joshi

(Nidhi Gupta)
Judge