

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRR-886-2016 (O&M)

Date of Decision: *February 27, 2023*

Kuldeep Singh and others

... Petitioners

Versus

Gurmeet Singh

... Respondent

CORAM: **HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr. Rakesh Nagpal, Advocate,
for the petitioners.

Mr. H.S. Batth, Advocate,
for the respondent.

Vivek Puri, J.

The petitioner has assailed the judgment dated 14.01.2016 passed by the Court of learned Additional Sessions Judge, Patiala vide which the order dated 02.06.2015 passed by the Court of learned Judicial Magistrate First Class, Patiala, has been set aside.

The respondent has instituted a complaint against the petitioners in the Court of learned Judicial Magistrate First Class, Patiala with regard to the commission of offence under Sections 307, 323, 324, 341, 506 of the Indian Penal Code (for short 'IPC'). The allegations of the complainant in the complaint are to the effect that the respondent was having previous enmity with the petitioner no.1 as during his tenure as Sarpanch, he mis-managed the funds of the village panchayat, the petitioners no.2 to 4 were his party men and they threatened

the respondent to desist from the act of challenging the activities of Sarpanch. On 05.07.2011, the respondent had gone to Patiala on a bus. The respondent was getting off from the roof of the bus at Thikriwala chowk and the petitioners armed with knives and swords arrived at the spot. The other passengers in the bus took away the knives and swords of the petitioners, but the petitioner no.2 to 4 dragged the respondent from the roof of the bus gave kick blows and blows on the head, chest and abdomen of the respondent. The petitioner no.1 was instigating the other petitioners to break the legs and arms of the respondent. With the intervention of the bus conductor and other passengers, the respondent was saved from the clutches of the petitioners and he was admitted in Rajindra Hospital, Patiala where his medico legal examination was conducted.

The respondent led the preliminary evidence and the learned Judicial Magistrate First Class in terms of the order dated 02.06.2015, dismissed the complaint.

The respondent had assailed the aforesaid order by preferring a revision and the same has been accepted in terms of the judgment dated 14.01.2016 passed by the Court of learned Additional Sessions Judge, Patiala. The impugned order was set aside and the trial Court was directed to pass a fresh order.

Aggrieved by the aforesaid judgment passed by the Court of learned Additional Sessions Judge, the present revision petition has been preferred by the petitioners-accused.

Learned counsel for the petitioners contend that summoning of accused in a criminal case is a serious matter. The summoning order cannot be issued as a matter of course. The learned Judicial Magistrate First Class has given sufficient and cogent reasons and declined the summoning of the petitioners. In the instant case, the police had also investigated the matter and proceedings under Sections 107/151 of the Code of Criminal Procedure (for short 'the Code') were initiated against the parties. Even there is a lack of medical evidence to indicate the injuries on the person of the respondent.

On the contrary, learned counsel for the respondent has argued that although the matter was also reported to the police, but it had not taken appropriate action. For the redressal of his grievance, the petitioner has approached the Illaqa Magistrate by submitting a complaint as the police had not taken appropriate action in the matter. The respondent remained admitted in hospital from 05.07.2011 to 08.07.2011. Sufficient evidence has been led by the respondent, which justify the summoning of the

petitioners as an accused with regard to the commission of the offence under Sections 307, 323, 324, 341, 506 IPC.

It may be mentioned here that at the stage of the summoning of the accused, there should be sufficient material to indicate the commission of the offence. The allegations at that stage are not required to be established beyond the shadow of reasonable doubt.

Learned Judicial Magistrate has *inter alia* observed that as per the report of the officer incharge of the police station, it was found that only one person i.e. Fateh Singh, petitioner no.2 had entered into fight with the respondent and the fight had taken place in the presence of Nek Singh son of Norata Singh and Kulwant Singh son of Karnail Singh. Besides the proceedings under Sections 107/151 of the Code were initiated against petitioner no.2 and the two witnesses before whom the alleged occurrence had taken place have not stepped into the witness box to corroborate the testimony of the respondent. Furthermore, it was highly unbelievable that in the event, the respondent was attacked with knives and swords in a public place, the assailants will leave him unhurt and will not inflict serious injuries on his person. The particulars of the bus in which the respondent was travelling have not been specified and the MLR has not been proved.

It is significant to note that the learned revisional Court while setting aside the order has observed that during the preliminary evidence, the respondent had appeared in the witness box as CW7 and had also examined CW1 Malkiat Singh, CW2 Ranjit Singh, CW3 Jagtar Singh, CW4 Surjit Singh and CW5 Ranjit Singh. All the witnesses have lent corroboration to the version of the respondent. They have attributed lalkara to petitioner no.1 and the other petitioners inflicted injuries upon the respondent. CW6 Dr. Naveen Mittal had brought the bed head ticket of the respondent while he remained admitted in the hospital. The x-ray examination was also conducted and the opinion of the surgeon was obtained. The respondent was discharged from the hospital on 08.07.2011.

Merely because on the basis of the same allegations, the police had not registered any FIR and only initiated proceedings under Sections 107/151 of the Code cannot be termed to be a circumstance to discard the version of the complainant in toto. In the event, the matter has not been investigated in proper perspective, there cannot be any bar for the respondent to approach the Illaqa Magistrate by filing a complaint with regard to the allegations as put forth by him. The initiation of the proceedings under Sections 107/151 of the Code will not in any manner stand in the way of the prosecution of the

petitioners in the event sufficient grounds are made out to summon them. Moreover, the non-examination of the eye witnesses who were allegedly examined during the course of police enquiry cannot be termed to be a justified ground to dismiss the complaint, particularly when the other eye witnesses to the occurrence have testified with regard to the version as put forth by the respondent. There is categorical case of the respondent that when the petitioners arrived at the spot, the passengers on the bus had taken the knives and swords from them and in such circumstances, the injuries by means of such weapons may not have been inflicted. The medical evidence has been adduced by examining CW6 Dr. Naveen Mittal and the respondent remained hospitalized from 5.7.2011 to 08.07.2011. In the event, the particulars of the bus in which the respondent was travelling, have not been specified, it cannot be termed to be a circumstance at this stage to disbelieve his version. The non-examination of the passengers travelling in the bus is inconsequential as the respondent is not required to examine all the eye witnesses available to him.

Section 203 of the Code provides as following:-

“203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion

that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”

The word “sufficient ground for proceeding” as reflected in the aforesaid provision of law indicates that the Magistrate is required to see as to whether there are sufficient grounds for proceeding against the accused for commission of an offence. The standard of proof required at the stage of enquiry is not the same, which is expected during the course of trial. The expression “sufficient ground” means that satisfaction to the extent that a prima facie case is made out against the person accused of an offence and not sufficient ground for the purpose of conviction. The material on record must indicate that sufficient grounds are made out for summoning the person as an accused and it is not expected that there should be sufficient grounds at that point of time for the purpose of conviction. In the instant case, the deposition of the respondent/complainant is also supported with the eye witness count of the witness and the Medical officer who has testified with regard to sustaining of injuries and hospitalization of the respondent. It cannot be said that the evidence of the witnesses is not probable and consistent with the facts and circumstances of the case. The dismissal of the complaint on the score that the police had

not initiated any action in the matter cannot be termed to be just and proper.

In these set of circumstances, no illegality or irregularity is made out in the judgment passed by the learned revisional Court, which may call for interference by this Court.

Dismissed.

February 27, 2023

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Whether speaking/reasoned: Yes
Whether reportable: Yes

(Vivek Puri)
Judge