

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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2023:PHHC:118088

CRM-M-44478-2023

Date of decision: September 6th, 2023

Ramesh @ Ramesh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Lalit Rishi, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

Prayer in the instant petition under Section 482 Cr.P.C. is for setting aside the impugned judgment dated 06.03.2018 (Annexure P-5) passed by learned Additional Sessions Judge, Bhiwani, whereby the complaint of the petitioner i.e. COMI No.2117 of 2013 under Sections 323/506/341/342/294/510/120-B IPC and Section 3 of SC/ST Act, Police Station City Bhiwani, titled as 'Ramesh Kumar Versus Ramniwas and others' has been dismissed.

2. Brief facts leading to the filing of the instant petition may be noticed as thus:-

Petitioner-complainant (hereinafter referred to as 'complainant') filed complaint dated 06.06.2013 against the private respondents for commission of offences under Sections 323/506/341/342/294/510/120-B IPC and Section 3 of SC/ST Act, wherein he levelled allegations that on 29.11.2010, respondents No.1 to 3 at about 5:00/6:00 pm, after throwing cow dung on his mouth, verbally abused him using caste based remarks. The complainant was thereafter assaulted by the above respondents, as a result of which he sustained injuries on his person. On the following day i.e. 30.11.2010, when the complainant was going to the Police Station to report

the occurrence, which had taken place on the previous day, respondents No.6 to 8 forcibly took him to Police Post, Dinod Gate. Respondents No.4 to 7, who are police officials, were in an inebriated condition then assaulted him and made casteist utterances against him. Since the police failed to initiate any action against the accused, the petitioner was left with no other remedy but to file the complaint in question. On the basis of the pre-charge evidence and other material on record; learned Additional Sessions Judge, Bhiwani, acquitted the respondents by holding that the complainant had failed to produce any evidence, much less cogent, which would warrant the summoning of the respondents-accused.

3. Learned counsel appearing for the petitioner has reiterated the allegations levelled in the complaint. He has vehemently submitted that the Court below gravely erred in discharging the accused, as at the stage of summoning, only a *prima facie* case has to be seen, which was clearly made out against them. He has further submitted that even though there was sufficient cogent material on record to summon the respondents-accused, the Court below had erroneously ignored the evidence of the complainant and three other witnesses, who had stepped into the witness box, in his support. It has further been submitted that the Court below had also turned a blind eye to the medico legal report (Annexure P-2) of the complainant, wherein also the nature of the assault carried upon him stood reflected. It has been lastly argued that no doubt, an FIR qua the same occurrence was also lodged at the instance of the opposite party, however, it is a matter of record that the petitioner had been acquitted by the trial Court in the said case FIR vide judgment dated 20.12.2012, which left no manner of doubt that the petitioner had indeed been a victim of the atrocities inflicted upon him, by the respondents-accused.

4. I have heard learned counsel for the petitioner and perused the relevant material on record.

5. Admittedly, no independent witness much less any eyewitness was examined by the complainant with respect to both the occurrences i.e. 29.11.2010 and 30.11.2010. No doubt, three witnesses i.e. CW1 Dharambir, CW2 Azad and CW4 Pawan did step into the witness box in support of the complainant, however, they admittedly even as per their own deposition, were not eyewitnesses of the alleged assault. Still further, a perusal of the medico legal report (Annexure P-2) does not reflect any external injury on the person of the complainant. The least that the complainant could have done was to examine the doctor, who treated him after the occurrence in question. However, admittedly no doctor was examined by the complainant to substantiate the allegations of assault and the injuries sustained by him in the occurrence in question. The contention of learned counsel qua his acquittal in the case FIR, which had been registered against him at the instance of the opposite party and hence, he being a victim at their hands, is totally bereft of any merit. Though, the petitioner was acquitted in the case FIR, however, it is a matter of record that the injured witnesses therein had turned hostile qua the petitioner, as a result of which he earned an acquittal. Moreover, the acquittal of the petitioner in the case FIR, which was registered against him, cannot substitute the lacuna of any evidence in the present complaint qua the petitioner.

6. The Hon'ble Supreme Court in its various judicial pronouncements has reiterated time and again that an accused in a criminal case cannot be summoned mechanically. It would be relevant to refer to *Pepsi Foods Ltd. and another Versus Special Judicial Magistrate and others 1998 (5) Supreme Court Cases 749*, wherein the Hon'ble Supreme Court has held as follows:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have

the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

7. As a sequel to the above discussion, this Court has no hesitation to uphold impugned order dated 06.03.2018 passed by the learned Court below.

8. The instant petition, therefore, stands dismissed.

September 6th, 2023

Puneet

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No