

(261)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25102-2018
Date of Decision: 01.04.2024

GANESH GEE

... Petitioner

Versus

PARAMJIT KAUR & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Parminder Singh-I, Advocate
for the petitioner.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 20.08.2013 (Annexure P-1) passed by the Judicial Magistrate 1st Class, Talwandi Sabo whereby the complaint filed by the petitioner was dismissed and for quashing of the order dated 06.03.2018 (Annexure P-2) passed by the Addl. Sessions Judge, Bathinda whereby the revision petition filed by the petitioner was dismissed in complaint No.104 dated 14.12.2012 registered Sections 341, 323, 506, 148, 149 IPC titled as Ganesh Gee Versus Paramjit Kaur & others.

2. The brief facts of the complaint are that the complainant and his father Birbal Dass had purchased land measuring 0 kanal 8 marlas from Murti Devi and Jeewan Jeewan Kumar and they were having possession over the land measuring 0 kanal 8 marla which they had purchased vide sale deed No.2409 dated 16.02.2005. A boundary wall was also constructed over the property by Murti Devi after getting permission from Nagar Council, Maur. She had constructed one room and in which one table and chairs etc. were

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kept. Mutation had been sanctioned in favour of complainant and his father. Accused Gurmail Singh, Girdari Lal, Karamjit Sharma and Jagdish Singh belonged to one party and they wanted to take illegal possession over the house. The complainant had filed a civil suit in which stay was granted in favour of complainant. A few days earlier the accused No.10 to 12 and 14 alongwith other persons had destroyed the room and boundary wall of the property and they had also robbed all things which had been kept in the room. In this regard a complaint had been filed in the Court. On 10.11.2012 at about 9 A.M when the complainant alongwith his father went to the property which he had purchased from Murti Devi, Gurmail Singh, Girdari Lal, Karamjit Sharma and Niab Singh armed with sticks and accused Paramjit Kaur, Rajwinder Kaur, Gurjit Kaur, Rani Kaur, Karamjit Kaur, Manjit Kaur, Sunita, Pooja and Madhu also came there. Accused Gurmail Singh Girdari Lal, Karmjit Sharma, Jagdish Singh and Niab Singh restrained the complainant party and accused No.10 to 14 did not allow the complainant to go forward. When the father of the complainant came forward to rescue him, accused Niab Singh and Gurmail Singh attacked him with sticks. Accused Paramjit Kaur and Rajwinder Kaur attacked with fist blows on the right arm of the complainant. Accused Gurjit Kaur and Rani Kaur gave fist blows on the head. Accused Karamjit Kaur, Manjit Kaur, Sunita, Pooja and Madhu gave fist blows in the stomach of the complainant. Accused Karamjit Pal and Gurmail Singh attacked with kicks on the person of the complainant. When the complainant raised an alarm of marta marta the accused fled away with their weapons and threatened that today they were spared but next time they would see them. Then the complainant was got admitted in Civil

Hospital, Maur. Police officials came to the hospital and got signatures on blank papers and they assured that action would be taken against the accused. However, instead of taking action against the accused, the police registered a false case against the complainant and his father vide FIR No.87 dated 10.11.2012 under Sections 431, 294, 323, 148, 149 IPC. Police official had refused to take action against accused. Hence the complaint had been filed.

3. The aforementioned complaint came to be dismissed by the Court of JMIC, Talwandi Sabo vide order dated 20.08.2013 (Annexure P-1).

4. A revision petition was filed by the petitioner/complainant before the Sessions Court at Bathinda and while allowing the revision petition, all the accused persons were ordered to be summoned to face Trial by the Court of Addl. Sessions Judge, Bathinda vide order dated 31.03.2016 (Annexure P-4).

5. The aforementioned order was challenged before this Court and vide order dated 09.01.2018 the revision petition was accepted and the case was remanded back to the Court of Addl. Sessions Judge, Bathinda directing him to pass a fresh order in accordance with law. The copy of the order dated 09.01.2018 was attached as Annexure P-5 to the present petition.

6. After the remand order was passed by this Court, the revision petition filed by the petitioner was dismissed vide order dated 06.03.2018 (Annexure P-2) by the Court of Addl. Sessions Judge, Bathinda.

7. The orders dated 20.08.2013 (Annexure P-1) passed by the JMIC, Talwandi Sabo and 06.03.2018 (Annexure P-2) passed by the Addl. Sessions Judge, Bathinda are under challenge in the present petition.

8. The learned counsel for the petitioner contends that the findings of the Trial Court that no visible injury was found on the person of the complainant is erroneous. The Court had not appreciated the fact that even if no injury was caused by sticks even then, it could not be a ground to throw out the entire complaint of the complainant. In fact, the medical evidence was totally in consonance with the ocular account. The Trial Court had erroneously given a finding that there was no connection of the complainant with the sale deed. This Court had remanded the case only on a limited issue and therefore, the same Court i.e. the Court of Revision could not have dismissed the revision petition when the same Court had earlier accepted the same. He, therefore, contends that the orders Annexures P-1 and P-2 were liable to be set aside and the respondents ought to be summoned to face Trial in accordance with law.

9. I have heard the learned counsel for the petitioner.

10. Though, there is no dispute that at the stage of summoning, the Magistrate is only to see whether a *prima facie* case for summoning is made out, however, in the instant case, a perusal of the MLR would reveal that all the injuries shown by the doctor on the person of the complainant are complaints of pain on different parts of the body and there is not even a single visible injury in the shape of a bruise. Though, the doctor had advised conducting of an X-ray upon various parts of the body, for reasons best known to the petitioner/complainant, he opted not to get himself subjected to an X-ray examination. A perusal of the DDR No.35 (Ex.CW4/A) dated 10.11.2012 in regard to the occurrence mentioned in this very complaint, would reveal that the complainant has changed his version in the private

criminal complaint from the one described in the DDR concerned. Therefore, the testimony of the complainant does not inspire much confidence. Further, once the injuries purportedly caused by the accused are not visible on the person of the complainant the allegations regarding encroaching upon the house or the plot of the complainant are to be considered with a pinch of salt. Even otherwise, the occurrence allegedly pertains to the year 2012 and as many as 12 years have elapsed ever since then. Therefore, the question of summoning the accused at this stage would be completely unjust more particularly looking into the nature of the allegations.

11. In view of the above discussion, I find no grounds to interfere with the well reasoned judgments of the Trial Court (Annexure P-1) and the Lower Appellate Court (Annexure P-2). Therefore, the present petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

01.04.2024
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No