

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40790-2017 (O&M)

Decided on 13.02.2024

Krishan Vashishta

... Petitioner

VS.

Balbir Verma, Chief Sanitary Inspector & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sunil Chadha, Sr.Advocate with
Ms. Kashish Aggarwal, Advocate
for petitioner(s) in CRM-M-40790, 40792, 40794 & 40811-2017
for respondent No.2 in CRM-M-38028-2018

Mr. Baljit Mann, Advocate
for the petitioner in CRM-M-38028-2018
for respondent No.2 in CRM-M-40790, 40792, 40794 & 40811-2017

Mr. GS Dhillon, AAG Haryana

Mr. Lajpat Rai Sharma, Advocate for
Mr. Vivek Khatri, Advocate for resp No.1 in CRM-M-40792-2017

Sandeep Moudgil, J.

(1). By this order, I propose to dispose of CRM-M-40790, 40792, 40794 & 40811-2017 and CRM-M-38028-2018 as issues involved are identical for adjudication by this Court and as such, CRM-M-40790-2017 is being treated as the lead case.

(2). This petition under Section 482 CrPC has been filed by the petitioner seeking to quash the judgment dated 16.09.2017 (Annexure P6) passed by Addl. Sessions Judge, Gurugram vide which the summoning order dated 16.05.2016 (Annexure P5) passed by CJM, Gurugram has been set aside and consequently, the matter has been remanded to the trial court to pass a fresh order.

(3). The petitioner-complainant filed a complaint under Section 148, 149, 323, 347, 427, 458, 395, 506 and 34 IPC alleging that on 03.09.2009, the accused namely Dilbagh Singh, Maha Singh and Balbir Verma gave a verbal threat to him and they even visited the shop of the petitioner on 04.09.2009 and demolished the structure of his shop and took away the material from the shop and gave beating to him and threatened to kill him.

(4). Learned Counsel for the petitioner-complainant submits that the above-named accused persons, without following the provision of the Haryana Municipal Act, 1973 forcibly entered his shop and removed the material which was kept only for safe custody of the material of the complainant. It is submitted that at the time of summoning of accused, the case is not to be examined in a meticulous manner like a final stage and further the Court was not bound to send the case under Section 202 CrPC as the accused were not residing beyond the jurisdiction of the trial court.

(5). On the other hand, learned Counsel for respondent/accused submits that various notices were issued by the authority to the complainant to remove the unauthorized construction and not to raise further construction without getting the site plan approved by the competent authority and the civil suit filed by the brother of the complainant against him also shows that he was restrained by the Civil Court not to raise construction without getting the site plan approved from the competent authority. It is further submitted that the petitioner did not disclose this fact in the Civil Writ petition No. 348 of 2000 decided on 05.01.2011, when the present complaint was pending for preliminary evidence.

(6). Heard learned counsel for the parties and gone through the record.

(7). The contention of learned counsel for accused/respondent finds force that some material documents were not produced by the petitioner during the pendency of the complaint before passing of the impugned order. A perusal of the order passed by the revisional court would show that some material documents were not produced in his preliminary evidence before the trial court although those documents were in his possession and knowledge. The allegations made in the complaint clearly shows that all the accused were residing within the jurisdiction of the trial Court when present complaint was filed and as such, Section 202 CrPC is not attracted in this case.

(8). In these circumstances, there is no fault in the order of the revisional court inasmuch as had the said documents been produced then the matter could have been examined properly from all corners and therefore, the case was rightly remanded back to trial court to pass a fresh order after taking into consideration the documents referred to in the above said writ petition. It is only after proper appreciation of the material already on the file and the documents attached with petition, that the Court can arrive at a just conclusion as to whether or not the matter requires further investigation, and in that backdrop, the trial court can exercise its power under Section 202 CrPC wherein the Magistrate is empowered to conduct an inquiry or investigation by himself or through other person in cases where a person is residing beyond the jurisdictional area exercisable by the Magistrate.

(9). The appellate court could not have examined or considered the documents placed before it for the first time and as such, the appellate court has rightly observed that firstly, the prima facie prohibitive value of the documents sought to be relied upon by the appellate stage, needs to be considered by the

trial court for which the appellate court has rightly remanded the matter back to the trial court.

(10). In view of the above discussion, the present petition is dismissed. However, the trial court shall be at liberty to make an opinion free from the observations made by the revisional court after examining the documents on which the petitioner wishes to place reliance upon, at this stage.

(11). Ordered accordingly.

13.02.2024
V.Vishal

(Sandeep Moudgil)
Judge

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |