

CRM-M-48561-2024

-1-

**117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-48561-2024

Decided on: 27.09.2024

Gagandeep

..... Petitioner

Versus

Suresh Kumar and another

.....Respondents

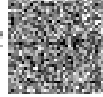
CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Suneet Kumar, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing of order/judgment dated 23.08.2024 (Annexure P-6) passed by learned Additional Sessions Judge, Fast Track (Exclusively dealing with Rape cases), Ferozepur and the order/dated 23.09.2019 (Annexure P-5) passed by learned Sub Divisional Magistrate Guruharsahai, whereby the complaint filed by the petitioner to summon the respondent as accused was dismissed.

2. Succinctly facts of the case are that the petitioner filed a complaint under Sections 420, 506 IPC for the prosecution of respondent No.1. Crux of the allegations made by the petitioner in the complaint is that he was unemployed and on 18.04.2015 he met with respondent No.1, who told him that there is a vacant post of Sewadar in his school and assured that he could appoint him on the said post. Respondent No.1 demanded Rs.50,000/- as illegal gratification from the petitioner for appointing him as Sewadar. On his assurance, father of the petitioner withdrew Rs.1 lac from his account in the post office and paid Rs.50,000/- to respondent No.1. However, neither the petitioner was appointed as Sewadar nor his money



was returned. Hence, a complaint was filed for the prosecution of respondent No.1. On filing the complaint, learned trial Court conducted preliminary evidence and on appreciation of the same, no *prima facie* case was found to be made out against respondent No.1 and thus, learned Sub Divisional Judicial Magistrate, Guruharsahai, dismissed the complaint vide impugned order dated 23.09.2019. Aggrieved by the same, the petitioner filed revision before learned Revisional Court, however, finding no merit in the same, learned Revisional Court dismissed the same vide impugned order dated 23.08.2023.

3. It has been submitted by learned counsel for the petitioner that the petitioner was cheated by respondent No.1 on pretext of providing job of Sewadar. He has submitted that the petitioner himself appeared as CW-1 and also examined eye witnesses Joginderpal Singh as CW-2 and Gurinder Singh as CW-3 before the trial Court in support of his complaint. He submits that from the preliminary evidence produced by said three witnesses, a *prima facie* case is made out for summoning of respondent No.1 for his prosecution, however, learned Courts below have fallen in error in misreading the evidence produced by the petitioner-complainant and thus, both the impugned orders being illegal and arbitrary passed by learned Courts below, deserve to be set aside by summoning respondent No.1.

4. Heard.

5. After hearing learned counsel for the petitioner and perusing the record, it is apparent that the precise allegation made by the petitioner in the complaint is that he gave an illegal gratification of Rs.50,000/- to respondent No.1 for providing him job. However, neither he was provided

job nor his money was returned. From a perusal of the preliminary evidence produced, material discrepancies were found in the depositions made by the witnesses. The main emphasis has been laid by the petitioner on the premise that father of the petitioner had withdrawn Rs.1 lac from his account in the post office, out of which Rs.50,000/- was given to respondent No.1 by the petitioner. No such presumption could be drawn that out this amount withdrawn by the father of the petitioner, the petitioner had given Rs.50,000/- to respondent No.1. As per settled preposition of law, summoning in a criminal case cannot be in a mechanical manner, unless there is a *prima facie* case. The summoning results in harassment to any innocent person. There is no denial to the fact that in the absence of any *prima facie* case having been made out, summoning made in a cavalier manner is violation of fundamental right enshrined under Article 21 of the Constitution of India. There are concurrent findings of both the trial Court and the Revisional Court in favour of respondent No.1. Thus, this Court does not find any infirmity in the view taken by both the Courts below and hence, there being no merit in the present petition, the same is hereby dismissed.

27.09.2024

sharmila

(RAJESH BHARDWAJ)

JUDGE

Whether Speaking/Reasoned

:

Yes/No

Whether Reportable

:

Yes/No