

(2006) 05 P&H CK 0235

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 4399-M of 2006

Wazir Singh

APPELLANT

Vs

Ram Kumar

RESPONDENT

Date of Decision: May 24, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2007) 1 RCR(Criminal) 784

Hon'ble Judges: R.S. Madan, J

Bench: Single Bench

Advocate: Jatinder Dhanda, for the Appellant; Ashwani Gaur, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Madan, J.

By filing the present petition u/s 482 of the Code of Criminal Procedure, the petitioner has craved the indulgence of this Court for quashing the order dated 22.7.2003 (Annexure P-2) passed by the learned Judicial Magistrate, 1st Class, Hisar as well as the order dated 15.12.2005 (Annexure P-3) passed by learned Additional Sessions Judge, Hisar, whereby partially dismissing the revision petition filed by the petitioner.

2. The brief facts of the case are that on 12.10.2002 Ram Kumar complainant filed a complaint in the Court of Illaqa Magistrate, alleging therein that on 8.9.2002 at 11 a.m. he was spraying his cotton crop in his field and his wife Rani was cooking food in the Dhani situated in the fields. They along with their children are residing there in the field by constructing a house. It was on 8.9.2002 when the petitioner along with four other co-accused came in the Dhani of the complainant and Gopi Ram raised a lalkara to teach a lesson to the complainant and his wife and to kill them. After raising a lalkara Gopi Ram gave a gandasi blow on the head of Rani. On the noise raised by Rani, the complainant was attracted to the place of occurrence.

Thereafter Gopi Ram gave another gandasi blow on the right hand of Ram Kumar, which hit on the fingers and thumb Janak Raj gave a jelly blow on the right leg of Ram Kumar. Accused Wazir, Janak and Sajjan gave jelly and lathi blows to Ram Kumar hitting on his right shoulder resulting into breaking of three bones. On account of injuries, I fell down and while I was lying on the ground, Wazir, Janak and Sajjan gave injuries with jellies and lathis on the right shoulder. Satrugan gave a gandasi blow from reverse side to Rani Devi and Sajan gave a jelly blow in between the legs of Rani Devi. On raising noise, Raj Kumar and Leela son of Baru resident of Village Danoda, who had come to our village to purchase buffalos and 3/4 passers-by reached there and on seeing them and taking Rani to be dead, all the above mentioned accused ran away with their respective weapons, extending threat to kill me and my wife, on getting the proper occasion. Thereafter, Raj Kumar brought me and my wife to Village in his tractor and was got admitted in Janta Hospital, Barwala where Dr. Sanjay Verma medico-legally examined both of us. A ruqa was sent to the Police Station but the police did not take any action. After discharge from the hospital, I went to the Police Station but instead of taking any action against the accused persons, the police personnel threatened to implicate me. As a result, the present complaint was filed in the Court.

3. After the filing of the complaint, the learned trial Court after hearing the learned counsel for the complainant and perusing the record placed on the file, vide order dated 22.7.2003 summoned the accused to face trial under Sections 323/324/325/326/447/452 and 506 read with Section 149 of the Indian Penal Code.

4. Aggrieved by the orders passed by the learned Judicial Magistrate, Hisar, the complainants filed a revision before the Court of Additional Sessions Judge, Hisar, who after recording detailed reasons partly accepted the revision petition observing that offence under 326 of the Indian Penal Code is not made out against the accused and hence the summoning of the revisionist u/s 326 is not sustainable. So far as the summoning of the accused for the remaining offences is concerned, the order is perfectly valid and there is no merit in the revision petition and the same was dismissed.

5. Feeling aggrieved against the orders passed by the Judicial Magistrate 1st Class and by the Additional Sessions Judge, Hisar, the petitioners have approached this Court by way of filing Criminal Misc. u/s 482 of the Code of Criminal Procedure Code.

6. According to the learned counsel for the petitioners, the learned Judicial Magistrate has not complied with the Section of 210 of the Code of Criminal Procedure, which reads as under :-

Procedure to be followed when there is a complaint case and police investigation in respect of the same offence - (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an

investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

7. The learned counsel submitted that the summing order dated 22.7.2003 passed by the learned Judicial Magistrate, Hisar is bad in the eyes of law and is against the provisions of the Code of Criminal Procedure.

8. I have heard the learned counsel for the parties and have carefully gone through the material placed on the record.

9. At the very out-set, it is observed that there is no merit in the contention of the learned counsel for the petitioners, because the learned Additional Sessions Judge, in paragraph No. 8 of its judgment has observed as under :-

In the present case, the police had recorded only a daily diary report and later closed the case. Even FIR was not registered in this case by the police, and therefore, the revisionist cannot be allowed to urge with a show of justification that he has been doubly jeopardised.

10. The recording of FIR and Daily diary report are two different stages of the investigation. In the investigation of a complaint if some evidence is collected and the complaint is filed on the same facts, the investigation of which is pending, the Judicial Magistrate is bound to follow the procedure as envisaged u/s 210 of the Code of Criminal Procedure but in the instant case the police only recorded the DDR entry and the recording of an entry in the DDR register ipso facto did not make out a case for following the procedure as has been laid down in Section 210 of the Code. Through the present petition, the petitioners have challenged the impugned order passed by the Judicial Magistrate, only on the ground that while passing the impugned order, the judicial Magistrate has not followed the procedure laid down u/s 210 of the Code of Criminal Procedure. It is not disputed that DDR was recorded by the police but no action was taken nor any investigation was conducted. Thus at the time of filing of complaint the police was not conducting any investigation on similar facts which were raised in the complaint. It was on this count that the learned trial Magistrate did not resort to provisions of Section 210 Cr.P.C. Thus, the order passed by the Magistrate for summoning the accused as well as passed by the Additional Sessions Judge, do not suffer from any illegality except the commission of offence u/s 326 IPC. No interference is called for u/s 482 Cr.P.C.

In the light of above discussion, there is no merit in this petition and the same is hereby dismissed.