
(2013) 07 P&H CK 0380

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-31344 of 2012 (O and M)

Rajbir

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 482
Penal Code, 1860 (IPC) — Section 323, 324, 325, 34

Citation : (2013) 07 P&H CK 0380

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Mani Ram Verma, for the Appellant; Satyavir Singh Yadav, Additional Advocate General, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Sabina, J.—Petitioner has filed this petition u/s 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") challenging order dated 30.9.2011 (Annexure P1) and order dated 19.9.2012 (Annexure P2). Petitioner has been summoned to face the trial in FIR No. 26 dated 19.2.2008 under Sections 323, 324 and 325 of the Indian Penal Code, 1860 ("IPC for short) registered at Police Station City Charkhi Dadri.

2. Learned counsel for the petitioner has submitted that the trial Court had erred in summoning the petitioner as an accused while exercising powers u/s 190 Cr.P.C. The Court of revision had further erred in dismissing the petition filed by the petitioner. The Court of revision had failed to decide the revision petition filed by the petitioner on merits.

3. Learned State counsel, on the other hand, has opposed the petition.

4. No one has put in appearance on behalf of respondent No. 2.

5. Section 190 Cr.P.C. reads as under:-

Cognizance of offences by Magistrates.-(1) Subject to the provisions of this chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

6. In the present case, petitioner was found innocent during investigation and at the time of presentation of challan, name of the petitioner was kept in column No. 2. However, the trial Court, while passing the impugned order dated 30.9.2011 (Annexure P1), has ordered the summoning of the petitioner qua commission of offence punishable under Sections 323, 325 read with Section 34 of IPC. While exercising powers u/s 190 Cr.P.C., the trial Court has noticed that the petitioner was specifically named in the FIR and specific role had been attributed to him at the time of occurrence. Injury alleged to have been inflicted by the petitioner was corroborated with the medico legal report. In these circumstances, the trial Court rightly exercised its power u/s 190 Cr.P.C. The plea of alibi taken up by the petitioner can be taken by him in his defence. But, at this stage, there was prima facie material on record to summon the accused to face the trial. Hence the orders passed by the Courts below do not suffer from any infirmity warranting interference. Dismissed.