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

**CRM-M No.29220 of 2012 (O&M)**

Reserved On: 01.05.2025

Pronounced on: 28.05.2025

Gurdev Singh and Others

... **Petitioners**

**Versus**

Sarup Singh

... **Respondent**

**CORAM: HON'BLE MR. JUSTICE H.S. GREWAL**

Present: Mr. Yogesh Goel, Advocate for the petitioners.

None for the respondent.

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**H. S. GREWAL, J. (ORAL)**

1. The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of complaint bearing No.296 dated 12.06.2003 (Annexure P-2) and summoning order dated 31.07.2007 passed by learned Judicial Magistrate Ist Class, Ludhiana issued under Sections 323, 341, 34 IPC impugned order dated 15.03.2010 passed by learned Judicial Magistrate Ist Class Ludhiana and order dated 22.09.2010 passed by learned Sessions Judge, Ludhiana alongwith all consequential proceedings arising therefrom.

2. The facts of the case are that FIR No.431 dated 02.04.2003 under Sections 323, 324, 34 IPC was registered at Police Station Payal, District Ludhiana against the respondent alongwith his son Gurwinder Singh and wife Amarjit Kaur at the instance of petitioner No.3 on account of injuries caused to the petitioner nos.1 and 3 and subsequently, the respondent also filed a complaint under Sections 326, 324, 341, 34 IPC against the petitioner as a cross complaint in the said occurrence.

3. After registration of FIR, challan was submitted and charges were framed against the respondents-Gurwinder Singh and Amarjit Kaur and the respondents-accused examined Dr. Prem Pal Gill as DW-1, Harbhajan Singh as DW-2, Surinder Singh as DW-3, Gurmit Singh as DW-4 and Bhagwan Singh as DW-5. After the conclusion of trial, the respondent alongwith wife Amarjit Kaur and Gurwinder Singh was convicted by the trial Court and were ordered to be released on probation by furnishing a probation bond in the sum of Rs.5000/- for one year undertaking of good behaviour and good conduct during this year. This order dated 15.10.2008 attained finality since no appeal was filed against the order of conviction and sentence after probation.

4. It is stated by learned counsel for the petitioner that the evidence given in defence by the respondents and witness regarding the occurrence, was rejected by the trial Court and, they were convicted for causing injuries to petitioner No.3. The respondents have thereafter filed Criminal complaint under Sections 326/ 324/341/34 against the petitioners and others regarding the same incident involved in the FIR levelling allegations against petitioner no.3 and others. The respondents examined the same Defence Witnesses (DWs) in the FIR case as Defence Witnesses, and (CWs) in the complaint case i.e. Surinder Pal Singh as CW-1, Harbhajan Singh as CW-2, Sarup Singh as CW-3, Gurwinder Singh as CW-4 and Dr. Prem Pal Singh as CW-5 and on the basis of preliminary evidence, the petitioner was summoned to face trial vide impugned order dated 31.07.2007.

5. The case of the prosecution is that once DWs have been disbelieved and the respondents have been convicted for the offences committed, the same persons giving similar statements as Complainant Witnesses (CWs) in a complaint could not be relied upon and the summoning of the petitioner is

uncalled for and could not be issued once witnesses have been disbelieved earlier for the same occurrence.

6. In order to support his contentions, learned counsel for the petitioner has relied upon judgment of Supreme Court in case titled as “**S.C. Garg Vs. The State of Uttar Pradesh and Another**”, Law Finder Doc Id # **2719901** wherein relevant paras are reproduced as under:

*“12. It is thus apparent that the finding recorded by the jurisdictional criminal court in 138 NI Act proceedings between the parties would be binding to both the parties in any subsequent proceedings involving the same issue.*

*13. The question as to the applicability of principle of res judicata in criminal matters have been considered by this Court in several decisions. In the matters of **Pritam Singh & Anr. vs. The State of Punjab, AIR 1956 SC 415, Bhagat Ram vs. State of Rajasthan, (1972) 2 SCC 466 & The State of Rajasthan vs. Tarachand Jain, (1974) 3 SCC 72**, this Court has consistently laid down the principle that the principle of res judicata is equally applicable in criminal matters. However, in two later decisions, namely, **Devendra & Ors. vs. State of Uttar Pradesh & Anr., (2009) 7 SCC 495** and **Muskan Enterprises & Anr. Vs. The State of Punjab & Anr., (2024) INSC 1046** in which one of us was a member (Justice Prashant Kumar Mishra), this Court observed in the context of maintainability of second petition under Section 482 Cr.P.C. that principle of res judicata has no application in a criminal matter. Considering divergence of opinion, it would be appropriate for us to have deeper examination and reading of the law laid down by this Court in the earlier decisions.”*

7. The case in hand while convicting all the accused under Sections 324, 323 read with 34 IPC, the learned trial Court in para 17 of the judgment has observed as under:-

*“17. The occurrence is not disputed by accused. Rather accused have put forth the that complainant caused them injuries on the date of occurrence. Accused have tendered photo copy of a compromise which was, as per the version of accused entered into between Jagmohan Singh and accused. It means accused admit that occurrence has taken*

*place. Complainant as well as two of the accused duly proved their MLRs. However, it is also admitted by the accused that they have not approached the police for the injuries caused to them. Further doctor has opined that injuries on Gurvinder Singh can be due to fall, whereas injuries on Sarup Singh can be due to fall on the hard surface. It means these injuries can also be suffered when there was fight between accused and the complainant. The version raised by the accused in their defence is doubtful on the ground that why they have not approached the police when they suffered the injuries at the hands of the complainant. Doctor has opined the nature of injury No. 1 as simple whereas injury No. 2 was kept under observation. Injury No 1 was caused by sharp edged weapon, whereas injury No. 2 was caused with blunt weapon. From the testimony of PW-1 Jagmohan Singh and PW-3 Gurdev Singh it stands proved that accused have given beatings to Jagmohan Singh due to which he suffered the injuries.”*

8. There is a plain finding that the injuries suffered by the complainant and his party in the complaint case could be due to a fall. The version now set up by the complainant in the complaint case that injuries suffered by them were given by the present petitioner is not tenable especially when the judgement of the trial Court has been appealed against. The respondent has accepted the judgment and the sentence of probation as awarded by the trial Court. After leading the same evidence appearing as Surinder Pal Singh appearing as CW-1, Harbhajan Singh appearing as CW-2, Sarup Singh as CW-3, Gurvinder Singh as CW-4 and have given the same version which was disbelieved by the trial Court/Judicial Magistrate Ist Class, Ludhiana. For the same set of evidence in complaint, the petitioner could not be summoned by Judicial Magistrate Ist Class, Ludhiana vide order dated 01.09.2007. Even as per *Mishri Lal's* case (*supra*), it is observed that the cross case should not be tried together.

9. Hon'ble the Supreme Court in "**State of M.P. Vs. Mishrilal (Dead)**": **Law Finder Doc Id#35580** has held as under:

*" Undisputedly, accused Mishrilal lodged the report to the police vide Ex.D-8 over the same incident happened on 5.3.1987, in which he had clearly stated the injuries were sustained by him and his son Madhusudan at the hands of prosecution party. It is also not disputed that on the strength of the complaint lodged by Mishrilal, investigation was also carried out and challan was filed namely crime case no.52/87 under Sections 147, 148, 149 and 324 IPC against the prosecution party which is pending for disposal before the learned Judicial Magistrate First Class. In the said challan, the prosecution party is stated to be an aggressor. This Court in **Nathilal Vs. State of U.P. 1990 (Supp.) SCC 145**, pointed out the procedure to be followed by the Trial Court in the event of cross cases. It was observed thus:-*

*"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."*

10. In the present case, since there is a finding by a Court which remains unchallenged, the summoning order although of an earlier date

could not be sustainable because on one set of evidence, two separate views are unsustainable.

11. In the light of the above, the present petition is allowed and complaint bearing No.296 dated 12.06.2003 (Annexure P-2) summoning order dated 31.07.2007 passed by learned Judicial Magistrate Ist Class, Ludhiana issued under Sections 323, 341, 34 IPC impugned order dated 15.03.2010 passed by learned Judicial Magistrate Ist Class Ludhiana and order dated 22.09.2010 passed by learned Sessions Judge, Ludhiana alongwith all consequential proceedings arising therefrom, is hereby quashed.

**(H.S.GREWAL))**  
**JUDGE**

**28.05.2025**

*Sonia Puri*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No