

RAJ KUMAR
20/5/2015 11:34

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

CRM-A No.1824-MA OF 2014
DATE OF DECISION : 28th JULY, 2015

Mani Ram

.... Petitioner

Versus

Dharampal & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Sumit Sangwan, Advocate for the petitioner.

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SURINDER GUPTA, J.

1. The complaint filed by petitioner-Mani Ram for offence punishable under Sections 148, 323, 452, 506 read with Section 149 IPC was dismissed by the trial Court vide order dated 20.08.2014 and the respondents were ordered to be discharged.

2. The occurrence, as per averments in complaint Annexure P-2, took place on 05.02.2010 during night time at about 10/10.30 pm when the complainant was having a chat with his wife and the children were studying. Respondent-Sunil and Dharampal armed with danda entered his house. Dharampal gave danda blow on the right eye of complainant. Sunil also gave a *danda* blow on the right eye of complainant. Then respondents-Bisambher and Gajje Singh came to his house with *danda* and gave beatings to the complainant. Thereafter Jagdish son of Surat Singh, Subhash and Bantia sons of Jagdish came to the house of complainant and gave leg and fist blows to him. Then Raghunath son of Surat Singh and Kalia son of Vedparkash came there and gave slaps to the complainant.

Last of all Roshni wife of Vedparkash, Mandhori wife of Bisambher and Sarli wife of Raghunath entered the house of the complainant and gave blows and slaps to him. On hearing the hue and cry complainant's father Chiranji Lal came there and saved the complainant from the respondents. After the occurrence the accused remained present in the street to prevent the complainant from going for medical examination. The matter was reported to the Police Station Badhra. The petitioner was medically examined at Gopi Hospital and his MLR records that he had sustained thirteen injuries.

3. The police came to Gopi Hospital and recorded the statement of complainant. But the same was not recorded correctly with the intention to help the respondents. The signatures of complainant were obtained on blank papers and the police did not take any action. The complaint was filed on 17.03.2010.

4. The cause of occurrence was that there was a civil suit pending between father of complainant and accused Bisambher concerning the land of society. The court has decided in favour of the father of the complainant and rejected the membership of Bisambher.

5. After recording preliminary evidence all the twelve accused were ordered to be summoned. Thereafter, pre-charge evidence was recorded wherein the complainant himself appeared as PW-4 and examined Chiranji Lal as PW-3, Bala (also mentioned as PW-3) and Dr. Sanjeev as PW-2, who had conducted medical examination of the complainant. The

trial Court discarded the version of the complainant inter alia on following grounds:

- (i) It was found unbelievable and unreliable that twelve persons armed with blunt weapons like *lathi* and *danda* entered house of complainant at about 10/10.30 pm with their common object but no member of the family of the complainant who was present was even touched.
- (ii) The litigation was with father of the complainant, which as per the complainant was decided in his favour. Father of the complainant Chiranji Lal was present and had rescued him but the accused did not touch him and the injuries were caused only to the complainant.
- (iii) There is possibility of false implication of the accused in the present case as they are from one family. Accused No.1 is son of accused No.2 Dharampal. Accused no.5 and 8 are sons of Surat Singh, Accused No.11 Mandhori is wife of accused No.3-Bisambher and accused No.12-Sarli is wife of accused No.8-Raghunath.
- (iv) The occurrence took place at about 10/10.30pm and none of the neighbours etc. gathered at the spot or was examined as eyewitness of the occurrence.

6. Learned counsel for the petitioner has argued that opinion of the trial Court is based on conjecture and surmises. It has failed to take note of the fact that there were twelve injuries on the person of the

complainant. Even if no injury was caused to the wife, son or father of the complainant, it does not affect the prosecution case in any manner. Father of complainant Chiranji Lal who appeared as PW-3 has stated that the house of Chhotu, Hawa Singh, Sarwan Singh were in front of their house while Rameshwar Barbar, Ram Kishan, Birje and Kuldeep etc. are living in the adjoining houses. There was light when the respondents entered their house but thereafter there was power failure. He has deposed as eyewitness of the occurrence and stated that accused (respondents) remained in their house for twenty minutes. He admitted three other litigations with respondent Bisambher and moving of application against Raghunath and Kalia (respondent) etc. for putting his fodder on fire. While denying this that he had admitted his mistake before the Panchayat regarding falsity of his application he has stated that he was under the pressure of the Sarpanch and Panchayat Members and had accepted what they had decided. Bala wife of complainant, while appearing as PW-3, controverted the testimony of father of complainant by stating that he reached the spot after they have received injuries. She has also stated about some injuries caused to her by the assailants, but this fact is not mentioned in the complaint. Complainant himself while appearing as PW-4 has stated that his father reached at the spot after he had received the injuries and has also contradicted his wife's statement by stating that she did not receive any injury during the occurrence and nobody gave slap or fist blow to her.

7. As per the averments in the grounds of appeal, in medical examination eight-nine bruises and injury near the right eye of complainant were found. It has been stated that the occurrence took place during the night at about 10/10.30pm. No evidence was produced that the matter was reported to the police. Though this fact has been pleaded that the statement of complainant was recorded by the police but the same was not correctly recorded. However that statement and the action taken thereon have not been produced or proved on record.

8. The complainant is living in a village. The occurrence took place in winter season when the people are usually indoor. It is highly improbable that none from the neighbourhood had reached the spot on hearing the noise during the occurrence which continued for about 20 minutes. This story putforth by the complainant that they were not allowed to go to the hospital, is also not probable. The police could be intimated using telephone/mobile. The most distressing feature of this case is that even if this version of the complainant that an occurrence has taken place, be given some credence, still the over-enthusiastic approach and venom of complainant against the respondents are the factors sufficient to discard his version. It is not believable that twelve persons with their common intention to cause injuries entered the house of complainant and gave him only simple injuries like bruises etc. The complaint has been drafted in such a manner that one or the other injury has been attributed to every respondent. As per the complainant, Dharampal first gave a *dang* blow below his eyes and then he did nothing. Thereafter, came the turn of Sunil

who also gave him one injury. Then Bisambher, Gajje Singh @ Zile Singh came and caused injuries to complainant. They were followed by Jagdish son of Surat Singh, Subhash and Bantia sons of Jagdish who also caused fist and leg blows to complainant, followed by Raghunath son of Surat Singh and Kalia son of Vedparkash, who intruded in his house later on and caused fist and slap blows to the complainant and last of all Roshni wife of Vedparkash, Mandhori wife of Bisambher and Sarli wife of Raghunath came to his house and gave him slap and fist blows. It is quite unnatural that during the entire occurrence wife of the complainant was mute spectator. In case she had intervened she must have also been caused some injuries but as per the complainant no injury was caused to his wife. Though father of the complainant has also given the details of injuries like an eye witness but the complainant and his wife categorically state that he had reached the spot after injuries has already been caused.

9. There is the element of enmity between the parties. The litigation between the father of complainant and Bisambher is going on. Under these circumstances the trial Court rightly felt it not safe to rely on the testimony of the complainant and his wife. The first version of the complaint given to the police was also not produced and proved on file.

10. Before parting, it will be relevant to note that while filing a criminal complaint it has become a fashion to implicate as many persons of the accused party/family as possible just to put pressure and this case is glaring example of the same where the father, children, wife etc. all have been implicated by the complainant by attributing one role or the other to

them in the occurrence. A message must go to such complainant that by doing so they not only put the innocent persons to harassment but also waste the precious time of the Courts. It is ripe time that such complainants should be shown the door and not allowed to misuse the process of court to advance their agenda of harassing their opposite party.

On perusal of the judgment of the trial Court and the paper book, I find no legal or factual infirmity in the order passed by the trial Court calling for interference by this Court. No reason is made out to grant any leave to appeal under Section 378(4) Cr.P.C. Accordingly, the petition along with application seeking special leave to appeal, are dismissed.

28th July, 2015
'raj'

(SURINDER GUPTA)
JUDGE