

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-23795 of 2015
Date of decision : August 04, 2015

Birhma Devi and another

...Petitioners...

versus

State of Haryana

...Respondent...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Prateek Rathee, Advocate,
for the petitioners.

Mr. D.R. Singla, DAG, Haryana.

JASPAL SINGH, J.

Feeling apprehension of arrest in case FIR No. 211, dated 16.04.2015, under Sections 323, 325, 342, 384 and 506 IPC, at Police Station Sector 5, Gurgaon, Smt. Birhma Devi and Narender have preferred the instant petition under Section 438 of the Code of Criminal Procedure.

2. Complaint was moved by Vijay Chauhan, on the basis of which said FIR was registered, which read as under:-

“I, Vijay Chauhan, r/o New Roshan Pura, Nazafgarh, South West Delhi, today on 16.04.2015 at 10:30 a.m. along with Sikandar, r/o Dinpur Najafgarh and his son(Harsh) age 12 years, on my brother's red motorcycle (pulsar make) No. 340, had come to the

house of Birkhma Devi, who is resident of Dayanand colony, Gurgaon, we had come for the repair work in her house. Birkhma Devi along with her son showed us around the house and started beating us, and locked all three of us inside the room and took away all our repairing material and equipments along with the motorcycle and threatened us for life. And thereafter we were shifted from that house to another house and then released us after a while. And on our asking for return of our belongings the petitioners refused us”

3. The contention of learned counsel for petitioners is that allegations levelled by complainant are totally false and baseless. In fact, instant complaint is nothing but a counter blast to the FIR No. 210, dated April 16, 2015, got registered by petitioner No.1 against her tenant Sikender, who has vacated the tenanted premises in a damaged condition. When he was apprised of the same, he promised to get it repaired but subsequent thereto, he did not get the needful done and hurled abuses to petitioner No.1. He also extended threats to eliminate her. Moreover, either of petitioners was not equipped with any kind of weapon and are alleged to have given only fist blows and slaps. Both the petitioners are ready to join the investigation as well as to abide by all the terms and conditions imposed by this Court, in case, they are granted the concession of pre-arrest bail.

4. On the other hand, learned State counsel has hotly

resisted the petition and has submitted that Sikender Singh, who had vacated the premises belonging to petitioner No.1, had sent complainant-Vijay Chauhan, Bhim Singh and his son Harsh for getting the repair work done but petitioners gave beatings to them and also retained their instruments/articles meant for doing repair work as well as motorcycle. They were also confined illegally by petitioners. Due to fist blows and slaps given to Bhim Singh, he has suffered hearing loss, which falls within the definition of grievous hurt. Learned State counsel accordingly, prayed for dismissal of petition.

5. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties and has meticulously gone through the records available.

6. It is an undisputed fact that Sikender Singh had vacated tenanted premises belonging to petitioner No.1 and has promised to get repair work done in the tenanted premises. He sent Vijay Chauhan, Bhim Singh and his son Harsh for the said purpose but they were not only giving beatings by petitioners by unlawfully confining them in their room but also illegally retained their motorcycle as well as instruments/articles taken by them for the purpose of repair work. Due to injury suffered by Bhim Singh, at the hands of petitioners, he has suffered hearing loss. He was subjected to audiometry test conducted on April 24, 2015 in PMIS Rohta. According to the report, he has suffered "severe to severe hearing loss". The said injury has been opined to be grievous in nature by the concerned medical officer. Petitioner No. 1- Birhma Devi, is aged

about 56 years and she being a lady, deserve some leniency especially when she was not equipped with any weapon and also did not cause any specific injury. Accordingly, instant petition preferred on her behalf is allowed and she is ordered to be released on bail on her furnishing bail bonds but subject to the conditions provided under Section 438 (2) Cr.P.C. with further direction that she shall appear before the investigating officer on August 11, 2015 and as and when required by the investigating agency.

7. So far as the role of Narender-petitioner No. 2 is concerned, fist blows given by him resulted into grievous injury. He not only confined Bhim Singh and others but also caused injuries to them. Even victims were not allowed to take their motorcycle and instruments/articles brought by them for doing repair work. Since, Bhim Singh has suffered severe to severe hearing loss, which falls within the ambit of grievous injury, petitioner No.2 does not deserve the concession of pre-arrest bail. Accordingly, petition qua petitioner No. 2 stands dismissed.

August 04, 2015

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**(JASPAL SINGH)
JUDGE**