

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

CRM No.M-32326 OF 2013 (O&M)
DATE OF DECISION : 30th JULY, 2015

Raj Kumar

.... Petitioner

Versus

State of Haryana & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Baljinder Singh Virk, Deputy Advocate General, Haryana.

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SURINDER GUPTA, J. (ORAL)

The FIR in this case bearing No.215 dated 10.10.2012 was registered on the basis of DDR No.42 dated 23.09.2010 (Annexure P-3).

The contents of DDR No.42, as given in Annexure P-3, reads as follows:

Statement of Ruksana w/o Riyaz R/o Old Mustafabad

Nagar, 25 Feet Road, Street No.24, H.M.29 Delhi, age 42 years stated that I am resident of above mentioned address and is a house wife. That on 22.09.2012, I was at the house of my sister Jubeda W/o Aasin R/o J-60, Dharam Colony, Gurgaon at about 9:30 pm. That persons namely Javed, Akil, Jahir, Karimullah came and started fighting with my sister Jubeda and when I tried to stop them, then they started fighting with me also and asked to take back the case, which was filed by us on 16.08.2012 regarding an earlier fight, otherwise consequences will be bad, and that they had links

with high-ups. After this all four of them messed up all the goods of our house and were repeatedly asking us to take back the complaint of 16.08.2012 or otherwise they would kill my son, and that they had met with ACP. All four of them gave beatings to me and ran away. After that son of my sister took me to Govt. Hospital for treatment. That now you have come. State ment got recorded, heard and is correct. Sd/- Ruksana Attested-H.C. Naveen Kumar, P.S. Palam Vihar, Police Proceedings: Today I H.C. is present at police station a telephone call was received form GH Gurgaon that Ruksana wife of Riyaz R/oJ-60, Dharam Colony, Gurgaon has received injured in a fight and is admitted in hospital. I HC reached GH Gurgaon, where MLC No.AR/628/1291 dated 23.09.2012 of injured and rukka was received. Permission was taken from doctor to record statement on which he declared the injured to be fit for statement and after recording statement it was read over to the injured, who on admitting it to be correct signed the same, which is verified by me. In MLC total 4 injuries has been stated and all four are blunts and x rays has been advised and stated to be KUV. That from this no cognizable offence is found to be made out and the case is found to be suspicious. That in this regard there is already a case registered on 16.08.2012 between injured Ruksana and Ayub Khan and his family. This matter is being

handled by ASI Krishan Kumar, P.S. Palam Vihar. That on reaching P.S.MLC and statement were given to Krishan Kumar for further actions. Statement were recorded and circumstances were informed to SHO.

After registration of the FIR on 10.10.2012, statement of complainant-Ruksana was recorded on 14.10.2012 wherein she had stated that a similar occurrence had taken place with the complainant party on 16.08.2012 and in connection with that occurrence she was called by petitioner for getting the compromise effected. On 05.09.2012 she along with her husband went to the house of petitioner, who asked them to come in evening. When she went to the house of the petitioner in the evening he asked her to spend a night with him and started misbehaving with her by touching her breast with bad intention. When the complainant objected, the petitioner got annoyed and asked her not to disclose this incident to anybody otherwise he will kill her. He also asked her to compromise with accused regarding the occurrence dated 16.08.2012. Thereafter, the occurrence took place on 22.09.2012, regarding which matter was reported to police on 23.09.2012

Learned counsel for the petitioner has argued that as per the supplementary statement of Ruksana (Annexure P-5) the complainant was called on 05.09.2012 by the petitioner which is a date much prior to the incident regarding which FIR No.215 dated 10.10.2012 was registered. The police has not gathered any evidence of conspiracy by the petitioner with regard to the occurrence dated 22.09.2012 and in the enquiry, they

conducted after the presentation of challan (Annexure P-7), the petitioner was found to be innocent. The reason for implicating the petitioner is that he is the President of Resident Welfare Association of the area where the parties are living. On the date of occurrence he was in the meeting of the association, which had taken place from 6.20 pm to 8.30 pm as per Annexure P-8. The complainant after 22 days of occurrence has falsely implicated the petitioner as he had tried to get compromise effected between the parties.

Learned State counsel has argued that the police has already presented the challan, as such, enquiry conducted by Deputy Superintendent of Police at later stage has no meaning or can be looked into. The complainant has named the petitioner and it was due to this reason that the police had challaned him.

As per the case of the prosecution the occurrence has taken place on 22.09.2012 regarding which the DDR was registered on 23.09.2012. In the DDR the petitioner was not named.

The police after registration of the DDR did not register the FIR immediately as the matter was found to be suspicious and it was only after enquiry that the FIR was registered on 10.10.2012.

It is evident that till the registration of the FIR, the name of the petitioner has nowhere cropped up regarding the incident that took place on 22.09.2012.

It was only in the statement of complainant recorded on 14.10.2012 that she has named the petitioner and disclosed that she had met him on 05.09.2015 i.e. 17 days before the instant occurrence.

No role was attributed to the petitioner regarding the occurrence dated 22.09.2012 nor even his presence was mentioned at the time of occurrence till the FIR was registered on 10.10.2012. There is nothing on file that before recording that FIR, the police found any role of the petitioner in the occurrence or that he in any manner was related to or had any affiliation with the accused named in the FIR.

From the above facts it is clear that the complainant had no grouse against the petitioner at the time her statement was recorded on 23.09.2012 or till registration of the FIR on 10.10.2012. It was only at the later stage that he has been named. From the statement of the complainant recorded by the police and on perusal of the copy of the challan (Annexure P- 6), no specific allegation of conspiracy to commit the occurrence has come forth against the petitioner. This case appears to be a sheer misuse of the process of Court and law by the complainant and this Court has no hesitation to record that the police without verifying the allegation or making out a prima facie case against the petitioner, has presented the challan in haste against the petitioner. In case the complainant had an iota of grievance against the petitioner or any incident, as alleged by her, had taken place on 05.09.2012, she would not have remained silent for such a long time, thereafter or at least had narrated the incident to police in her statement dated 23.09.2012.

In view of the facts and circumstances discussed above, I find it to be a fit case calling for exercise of inherent power of this Court under Section 482 Cr.P.C. to quash the FIR qua the petitioner. Accordingly, the petition is allowed and the instant FIR along with all consequential proceedings arising therefrom are quashed qua the petitioner. It is, however, made clear that nothing observed in this order shall be interpreted as expression of opinion on merits of any aspect of the case against other accused facing trial.

30th July, 2015
'raj'

(SURINDER GUPTA)
JUDGE