

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Revision No.4224 of 2014(O&M)

Date of Decision: January 13, 2015.

Dr. Ram Kumar

..... PETITIONER (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. P.S.Hundal, Senior Advocate with
Mr. Abhishek Sethi, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

CRM No.823 of 2015

For the reasons mentioned in the application, the same is allowed and amended copy of the impugned order dated 29.11.2014 passed by learned Additional Sessions Judge, Hisar is taken on record subject to all just exceptions.

CRM stands disposed of.

CRR No.4224 of 2014

This revision petition has been filed challenging order dated 29.11.2014 passed by learned Additional Sessions Judge, Hisar whereby charge

for offences punishable under Sections 329/420/120B/34 IPC have been framed against the petitioner.

Occurrence in question took place on 08.02.2010 wherein complainant Sandeep and his brother Pardeep allegedly suffered injuries. FIR No.180 was registered on 11.02.2010. Petitioner is stated to have treated the injured Pardeep and given medico legal report dated 09.02.2010 (Annexure P3). The relevant portion of the same reads as under:-

“History: Alleged history of assault at about 00:30 a.m. 09.02.2010 by baseball stick over head. History of loss of consciousness. O/E conscious, dull. Pupil B/L NS Rt+

Examination: Pulse: 86pm; BP: 130/90

Local:

1. 6x3 cm swelling over right parietal region.

Bleeding +ve

2. 3x3 cm swelling at occipital region

Advised NCCt Head.”

It is urged that the police authorities got constituted a Medical Board to look into the said injuries being suspicious of the same. The medico legal report by the said Board comprising Dr.Arun Gupta, Dr. M.L.Kamra and Dr. Dalal is annexed at Annexure P5. The relevant part of the said MLR reads as under:-

“IV. Particulars of Injuries:-

1. A stitched wound size about 15 cm on Rt. Parieto-temporal region of the skull.

Nature of Injury:

Kind of Weapon:

Remarks Duration:

2. Complains of pain on occipito-parietal region of skull with mild swelling.
- After going through the papers including copy of MLR, C.T. Scan film (head), C.T. Scan Report, operation papers and treatment file, the board is of the opinion that the injury No.1 is declared dangerous to life. The relevant documents have been perused by us. Total papers are from 1 to 9.”

The police officials, however, relied upon a medico legal report (Annexure P6) allegedly issued by Sapra Hospital, Hisar wherein the injuries are mentioned as under:-

“I. Brief History: Alleged h/o assault.

II. General Condition: Conscious & oriented

IV. Particulars of Injuries:-

1. Lacerated wound 2.5x1.5 cm occipital region; Blunt
Advised NCCT Head
2. Lacerated wound of size 1.5x1cm upper lip.”

The prosecution case against the petitioner is that he has fabricated an injury on the head of Pardeep and prepared a false report for the offence punishable under Section 307 IPC. It was found that one Mukesh son of Hari Parkash stated before the police that Dr.Sumit was a mediator in the said affair and he had assured the procuring of medico legal report to bring the case within the ambit of Section 307 IPC from the petitioner. The deal was struck at ₹80,000/-. A sum of ₹30,000/- was paid to Dr. R.Kumar through Dr. Sumit.

Learned senior counsel for the petitioner submits that the impugned order is liable to be set aside primarily on the ground that there is no

evidence on record to connect the present petitioner with the offences so charged. It is further submitted that the statement of Mukesh under Section 161 Cr.P.C. has been made after a period of one year of the occurrence i.e., on 07.02.2011. Therefore, no reliance whatsoever can be placed on his statement. Furthermore, Mukesh in his statement under Section 164 Cr.P.C. does not give details of payment of the amount to the petitioner. Therefore, in this situation, there is no evidence whatsoever to connect the petitioner with the offences in question.

Reliance is placed on judgment of the Hon'ble Supreme Court in **State of Karnataka v. L.Munishwamy and others, 1977 AIR (SC) 1489** to urge that once the court finds absence of necessary material on record to connect the accused with the incident leading to prosecution, the entire proceedings should be quashed. He also relies upon judgment of the Rajasthan High Court in **Dr. S.N.Vyas v. State of Rajasthan, AIR 1966 Rajasthan 164** to say that the opinion of an expert should not easily be negated. The handicaps and the limitations under which all experts including medical witnesses have to function must be noted.

I have heard learned senior counsel for the petitioner and gone through the file.

It emerges that the petitioner is being proceeded against for the offence of forging and fabricating an injury on the person of Pardeep in order to initiate a case under Section 307 IPC against the other party. Prosecution has relied on the medico legal report (Annexure P6) issued by Sapra Hospital itself on 09.02.2010 wherein two lacerated wounds are mentioned; one on the

occipital region and the other on the upper lip. Prosecution case also rests on the statement of Mukesh under Section 161 Cr.P.C. as well as Section 164 Cr.P.C. wherein he has given the entire details as to how the deal was struck. He mentions that one Anoop son of Radha Krishan had submitted a complaint on 26.03.2010 regarding fake and fabricated injury on the person of Pardeep. The said complaint was inquired into by Inder Singh Kundu, Deputy Superintendent of Police, who found that the injury on the person of Pardeep is a false and fake one. Accordingly, Sections 307/506 IPC were deleted from the FIR and he had recommended for cancellation of the FIR. Accordingly cancellation report was prepared by the SHO, police station City, Hisar on 07.04.2010. On going through the cancellation report, it was found that certain aspects are required to be reinvestigated and Superintendent of Police, Hisar ordered for fresh investigation into the matter on 26.11.2010. It is during this reinvestigation that Mukesh son of Hari Parkash was joined in the investigation and he got recorded his statement under Section 161 Cr.P.C. giving the entire details of the deal being struck with the petitioner. Statement of Mukesh was also recorded before the Judicial Magistrate.

At this stage, it is relevant to note that the petitioner had earlier filed Crl.Misc. No.M-17719 of 2011 for quashing of FIR No.180 dated 11.02.2010, which was ultimately dismissed on 17.11.2014 by this Court vide a detailed order. Though this fact finds mention in the petition but order dated 17.11.2014 has not been appended alongwith this petition. File of Crl. Misc. No. M-17719 of 2011 has been perused. While dismissing the said petition, it was observed as under:-

“ Adverting to the present case, the allegations made by the prosecution clearly constitutes an offence which will have to be tried. It cannot be said that the allegations smacks of malafide. There are no allegations that the name of the petitioner has been roped in on account of any rivalry. Applying the test laid down in above decisions, it is held that it is not a fit case where the powers under Section 482 Cr.P.C. should be exercised. The petition is dismissed.”

Thereafter, charge was framed against the petitioner vide impugned order dated 29.11.2014.

Keeping in view the facts and circumstances of the case, it would not be appropriate for this Court to go into the factual aspects or appreciate the evidence to test the veracity and genuineness of the same. This aspect is the subject matter of trial and would be looked into by the learned trial court. There is no quarrel with the preposition of the law laid down by the Hon'ble Supreme Court in **L.Munishwamy and others' case** (supra) to the effect that the inherent powers of this Court should be used to prevent the abuse of process of the court. However, in the present case, I do not find any compelling reason to interfere at this stage and quash the proceedings against the petitioner. It cannot by any stretch of imagination be said that the proceedings against the petitioner are an abuse of process of law. Furthermore, the judgment of Rajasthan High Court in **Dr. S.N.Vyas's case** (supra) does not improve the case of the petitioner in any manner. This judgment is not relevant in the facts and circumstances of the present case. In **Dr. S.N.Vyas's case**, the court was dealing with the certain observations which had been made by the court in

respect to an opinion rendered by the medical expert. In the present case, there are specific and positive allegations against the petitioner of having misused his position as a medical practitioner for consideration.

In view of the above, I find no ground to interfere in the impugned order dated 29.11.2014 passed by learned Additional Sessions Judge, Hisar framing charge against the petitioner.

This revision petition is accordingly dismissed.

Needless to say, none of the observations made hereinabove shall be construed to be a reflection on the merits of the case.

January 13, 2015.
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(LISA GILL)
JUDGE