

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-12834-2015

Date of decision: January 13, 2016

Rishi Parkash and others

.....Petitioners.....

versus

State of Haryana and others

.....Respondents.....

**CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH**

Present:- Mr. Akashdeep Singh, Advocate,  
for the petitioners.

Mr. Tanuj Sharma, AAG, Haryana.

Mr. N.K. Malhotra, Advocate,  
for respondent No.3.

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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? (✓)

**Jaspal Singh, J. (Oral)**

Reply on behalf of respondent No.3 has been filed in Court today and same is taken on record.

2. The present petition has been preferred under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") by Rishi Parkash and others seeking quashing of order dated January 23, 2015 (Annexure P-7) passed by Id. JMIC, Rohtak and the order dated April 07, 2015 (Annexure P-9) passed by Id. Sessions Judge, Rohtak as well as all subsequent proceedings emanating therefrom.

3. Briefly stated the facts giving rise to the instant petition are that a case bearing FIR No. 140, dated 14.06.2014, under Section 304-A

IPC, Police Station PGIMS Rohtak, was registered against Pawan Ahlawat-respondent No.3, contractor of the swimming pool, Principal, Kendriya Vidhalya School, Rohtak (for short, "KVS") and the life guards namely Kapil and Sandeep. However, during the investigation of the case, Pawan Ahlawat-respondent No.3 was found at fault whereas other accused were found innocent. Report under Section 173 (2) Cr.P.C. was presented only against respondent No.3 with the allegation that on June 6, 2014, he being a contractor of swimming pool of KVS, Rohtak done a rash and negligent act i.e. not providing any safety measures in the swimming pool and he is facing trial under Section 304-A IPC, for which he was charge-sheeted on March 09, 2015.

4. Here, it would be pertinent to mention that after about 5 months of the presentation of report under Section 173 (2) of the Code against respondent No.3, he lodged a complaint under Section 156 (3) of the Code for the registration of the FIR against the brothers of deceased, who are otherwise minors, aged about 14-16 years, by levelling allegations that they intentionally pushed their brother (since deceased) in the swimming pool with an intention to kill him. It appears that without taking into consideration the factum of registration of FIR and that the report under Section 173(2) of the Code has already been presented against respondent No.3-Pawan Gahlawat, Id. Magistrate mechanically directed the registration of FIR against petitioners No.2 and 3 allegedly for causing death of their brother. The order passed by the Id. Magistrate was also upheld by the Id. Sessions Judge, who also appears to have been taken the matter in a very casual manner that too without taking

note of the fact that Pawan Gahlawat-respondent No.3 is being already prosecuted on account of his negligence, which resulted into the death of Vivek (minor).

5. Passing of order dated January 23, 2015 (Annexure P-7) and upholding the same vide order dated April 07, 2015 (Annexure P-9) is nothing but an abuse of the process of law, especially, in the circumstances that respondent No.3 is already facing the trial under Section 304-A IPC, at the instance of petitioner No.1-Rishi Parkash.

6. It is pretty settled that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, deserves to be quashed.

7. Adverting to the case in hand, filing of the complaint under Section 156 (3) of the Code by respondent No.3 can be termed to be maliciously instituted with an ulterior motive to wreak vengeance from petitioner No.1, who has got registered the FIR against him, in which petitioners No. 2 and 3 are eye-witnesses.

8. In the light of what has been discussed above, this Court is of the considered view that impugned orders are not sustainable in the eyes of law. As such, same are quashed including all the subsequent proceedings emanating thereof by way of acceptance of the instant petition.

January 13, 2016  
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**(JASPAL SINGH)**  
**JUDGE**