

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

CRM-M-16430 of 2014 (O&M)

Date of decision : 18.01.2016

Vishal Singh Chauhan

...Petitioner

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Petitioner in person.

Mr. Saurabh Mohunta, DAG, Haryana

Mr. P. K. Ganga, Advocate for respondent No.4.

JITENDRA CHAUHAN, J. (Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of the FIR No.212 dated 28.02.2014, registered under Sections 294 and 506 of the Indian Penal Code (for short 'the IPC'), at Police Station City, District Sirsa, Haryana.

Brief facts of the FIR are read as under:-

“When I was sleeping on dated 01/02.02.2014 then suddenly at about 11.10 PM I got the phone from number 076965-95206. I picked the phone and started abusing me and said that I will give your torn agreement in your back, your time has come. I will not spare you and your family alive. I asked that who is speaking then he said that I

will come to Sirsa and tell you, then cut the phone. Then I called my son Pukhraj Singh there then and revealed all the talks then I asked him whose number it could be. He got to know that this number belongs to Vishal Singh son of Sukhbir Singh, H. NO.2357, Sector 24-C, Chandigarh, Vishal Singh is my nephew and I had property dispute with them which was resolved, but by this, apprehension of danger to life has been arised to my family. Therefore, it is requested that strict action be taken against the above said accused. Thanking you, Sd/- Balbir Singh Chauhan, Applicant Balbir Singh Chauhan Superintendent (Retired) son of Sh. Mangal Singh, H. NO.105, C-Block, Sirsa.”

It is contended that the delay of 25 days in initiating investigation shows the malafide intention of the concerned police officials. Section 154 Cr.P.C., stipulates that a police officer is duty bound to register the FIR immediately if information reveals the commissions of a cognizable offence without unnecessary delay, irrespective of the credibility and genuineness of the complaint. He further cites ***Surinder Suri Vs. State of Haryana and ors.*** 1996 (2) RCR (Criminal) 701:1996 (2) AICLR 572, wherein FIR under Section 506 IPC was quashed by this Court by holding that mere vague allegation by the accused that he was

going to take revenge cannot amount to criminal intimidation.

The learned State counsel submits that after receiving the complaint on 03.02.2014, entry to this effect was made in the case diary of the agency, the petitioner was called up and the call details of the mobile numbers of the parties were collected on the basis of which, the present FIR was registered. Therefore, there is no irregularity on part of the investigating agency as alleged by the petitioner.

The learned counsel for respondent No.4 states that the petitioner has failed to explain as to why an abusive and threatening call to eliminate the complainant was made on 01.02.2014 at 11.10 PM. Therefore, the material ingredients to constitute the offences under Section 506 and 294 IPC are clearly made out.

I have heard the learned counsel for the parties and perused the record on file carefully.

This Court in ***Surinder Suri's case*** (*supra*), observed as under:-

“16. Court while considering the question of quashing of the first information report, has to see the malafides of the complainant, if there be any. If dominant purpose in filing the first information report is malafide, FIR would have to

be quashed. This view was taken by the Full Bench of the Delhi High Court in M/s Neelam Mahajan Singh v. Commissioner of Police and others, 1994(2) CLR 181. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue appropriate writ, order or direction as may be necessary in the administration of justice. This is a wide discretionary power. Similarly, the High Court has wide inherent powers under Section 482 of the Code of Criminal Procedure. This power is, however, to be exercised with certain amount of circumspection and with utmost care and caution. Section 503 of the Indian Penal Code defines criminal intimidation as follows:-

"Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation - A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

17. If we carefully go through the provisions of Section 503 of the Indian Penal Code, I do not think the allegations made by

Pawan Kumar on the basis of which FIR No. 297 dated 4.8.1995 was registered will satisfy the ingredients of Section 503 of the Indian Penal Code. The gist of the offence is the effect which the threat is intended to have upon the mind of the person threatened. The threat must be one which can be put into execution by the person threatening. A threat, in order to be indictable must be made with intent to cause alarm to the complainant. As for instance mere vague allegation by the accused that he is going to take revenge by false complaints cannot amount to criminal intimidation. In this case, it is doubtful if the so called threat could have any effect upon Pawan Kumar that he would be killed, when the petitioners did not dash their scooter against him. I am equally alive to this principle of law that the High Court should invoke its extraordinary jurisdiction under Article 226/227 of the Constitution of India for prosecution in very rare and exceptional circumstances. It should invoke its inherent powers under Section 482 Criminal Procedure Code in very rare and exceptional cases for quashing the prosecution. I am equally alive that criminal prosecution should be quashed in exercise of these powers by this Court if the intention of the complainant is malicious and is to wreak vengeance on the accused and to spite him

due to private and personal grudge and not to vindicate the law for the good of the society.

18. *In this case, my feeling is that this case FIR No. 297 dated 4.8.1995 authored by Pawan Kumar is the offshoot of the litigation spree due to the strained relations of Mrs. Vinay Kumari sister of Pawan Kumar with her husband Surinder Suri petitioner.”*

Section 294 IPC reads as under:-

“Obscene acts and songs -

Whoever, to the annoyance of others—

*(a) does any obscene act in any public place,
or*

*(b) sings, recites or utters any obscene song,
ballad or words, in or near any public place,*

*shall be punished with imprisonment of
either description for a term which may extend to
three months, or with fine, or with both.”*

The petitioner is none other than the nephew of the complainant, who have been litigating over the property owned by the family. There is no cogent evidence on record to prove that the conversation as alleged was made by the petitioner. The parties are hostile to each other. Therefore, execration and false implication of the petitioner, who is a young member of the bar with clean antecedents, cannot be ruled out. Accordingly, Section 294 IPC is not

attracted in the present case.

In a similar case, this Court quashed the proceedings in respect of the offence under Section 506 (ii) IPC in a case in ***Usha Bala V. State of Punjab*** reported as 2002(3) R.C.R. (Criminal) 445 by holding that “Empty threats does not prima facie mean that the case under Section 506 IPC is made out against the petitioner. Hence, in face no case is made out against the petitioner.”

In addition to this, the petitioner, according to complainant and FIR's version, called the complainant on his mobile and issued threats of eliminating him and his family. The Court is of the opinion that mere empty threat does not constitute offence under Section 506 IPC, as held by this Court in ***Usha Bala's case (supra)***. In the aforesaid circumstances, the FIR is mala fide and the story put forth appears to be a concoction to frame the petitioner, who did not use any weapon or criminal force.

Accordingly, the present petition is allowed. FIR No.212 dated 28.02.2014, registered under Sections 294 and 506 IPC, at Police Station City, District Sirsa, Haryana is quashed.

18.01.2015

ashok

(JITENDRA CHAUHAN)
JUDGE