

CRM-M-20447 of 2016

[1]

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

Sr. No. 126

CRM No.M-20447 of 2016

Date of decision: October 17, 2016

Pyara Singh and another

.... Petitioners

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. P.K. Ganga, Advocate,
for the petitioners.

JASPAL SINGH, J.

The instant petition has been preferred by the petitioners under Section 482 Cr.P.C. for setting aside/quashing of complaint No.76-1 of 2013, dated April 23, 2013 under Sections 323, 324, 341, 506 read with Section 34 of IPC pending in the court of Judicial Magistrate Ist Class, Ellenabad, District Sirsa and summoning order dated May 19, 2015 passed by the trial court as well as order dated May 06, 2016 passed by the Additional Sessions Judge, Sirsa.

2. As per the complainant's version, on March 15, 2012 at about 7.00 p.m., complainant-Avtar Singh along with one Gurtej Singh, were returning from the factory on his motorcycle. Wazir Singh and Pyara Singh

along with 4-5 other persons tried to run the car over the complainant. As a result of which, they fell down. Wazir Singh took out a sword from the car and hit on his right leg. Petitioner No.2-Malik Singh @ Malak Singh along with 4-5 other persons attacked the complainant and Gurtej Singh with sticks hitting on his right hand. The assailants had tried to drag them in the car, but they succeeded to escape from the clutches of the assailants. Complainant further alleged that previously also the accused fought with him and an FIR under Section 107/151 of IPC was lodged against them. Moreover, one another criminal case bearing FIR No.72, dated March 17, 2012, under Sections 323, 324, 341, 506 read with Section 34 of IPC was also registered relating to the present incident, but no action was taken by the police.

3. In preliminary evidence, complainant appeared as PW-1, EASI Chhotu Ram appeared as PW-2, Gurtej Singh (eye-witness) was examined as PW-3 and Dr. Davender Pal Singh was examined as PW-4. After going through the facts and circumstances as well as preliminary evidence led by the complainant, the trial court vide impugned order dated May 19, 2015 summoned the accused for facing trial under Sections 323, 324, 341, 506 read with Section 34 of IPC. A revision petition was preferred by the accused before the Court of Sessions against the aforesaid summoning order, but the same was dismissed vide order dated May 06, 2016, passed by the Additional Sessions Judge, Sirsa. Aggrieved by the aforesaid orders and the complaint moved by respondent No.2, the petitioners have approached this court.

4. Learned counsel for the petitioners has contended that the

courts below have failed to consider that impugned complaint is nothing but an abuse of process of law, because the matter has already been investigated and the allegations against the petitioners have been found to be false. The summoning order is not based upon sound reasoning and cannot be termed as an order in the eyes of law. The alleged occurrence is alleged to have taken place on March 15, 2012, whereas, the complaint was filed on April 24, 2013 i.e. after a long and there is no plausible explanation for delay. In fact, injuries have been manipulated by the complainant on his person, in collusion with the doctor. Moreover, a case FIR No. 246, dated June 15, 2014, under Sections 323, 341, 393 read with Section 34 of IPC, at Police Station Rania is registered against the complainant, who is, otherwise, a criminal type person and used to harass and humiliate the petitioners.

5. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioners and perused the record available on file.

6. It is the settled proposition of law that at the stage of issuing the process, the court is not to see whether there was any truth in the allegations levelled by the complainant. The court has to see only whether on the basis of the allegations, a cognizable offence is made out or not. In the case in hand, complainant appeared as PW-1 and specifically reiterated the allegations against the petitioners. The testimony of the complainant has also been corroborated by PW-3-Gurtej Singh who witnessed the occurrence. The ocular evidence led in preliminary evidence, has also been supported by the medical documents. Dr. Davinder Pal Singh PW-4 tendered into evidence his affidavit and duly proved the MLR of the

complainant (Ex.PW4/B) as well as diagram of the injury (PW4/C). In this view of the matter, the aforesaid evidence was sufficient for proceeding against the accused. As far as delay in moving the complaint is concerned, the complainant has categorically stated in his complaint that after registration of the case (FIR No.72, dated March 17, 2012), accused were not arrested by the police despite his visit to police station Rania time and again. The contention of the learned counsel for the petitioners is that as regards manipulation of injuries by the complainant in collusion with the doctor cannot be considered at this stage being the matter of trial. As regards FIR No.246, dated June 15, 2014, registered at Police Station Rania against the complainant-respondent No.2 as of no benefit to the petitioners, because only registration of any criminal case against the complainant does not prove him to be a criminal. As such, the complaint lodged by respondent No.2 against the petitioners cannot be said to be false.

7. In the light of what has been discussed above, this court does not find any illegality or infirmity in the impugned orders as well as complaint. However, it is made clear that any observation made in this order shall have no binding effect or bearing on the main complaint or its disposal and shall remain limited to the petition.

8. The instant petition is accordingly dismissed.

October 17, 2016
Avin/Ankur

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No