

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

**Criminal Misc. No. M-28893 of 2016 (O & M)
Date of Decision:-22.09.2016**

Manbir

...Petitioner

Versus

Chhattar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Jangvir S. Hooda, Advocate
for the petitioner.

HARI PAL VERMA J.

Petitioner Manbir son of Munshi, resident of Village Sangail, Tehsil Nuh, District Mewat has filed the present petition under Section 482 Cr.P.C. for quashing of order dated 16.3.2016 (Annexure P-4) whereby respondents-accused have been discharged from the trial for commission of offence punishable under Sections 148, 149, 323, 452, 506 and 120-B IPC in a complaint case titled 'Manbir vs. Chhattar etc.'. Challenge has also been made to the order dated 28.7.2016 (Annexure P-5) passed by learned Additional Sessions Judge, Mewat whereby revision against the order dated 16.3.2016 was dismissed.

Briefly stated, petitioner has filed a criminal complaint under Sections 148, 149, 323, 452, 506 and 120-B IPC alleging therein that on 30.9.2011 at about 8.00 PM when the complainant alongwith Manoj @

Balwant son of Chainpal, Kailash son of Khichu @ Mahender and other family members were sitting in the house, then suddenly all the respondents-accused after constituting unlawful assembly having lathi, farsa and ballam in their hands entered into the house of complainant and caused injuries to the complainant, Manoj @ Balwant son of Chainpal, Kailash son of Khichu @ Mahender and other family members of the complainant. The accused have further threatened that even if the complainant has obtained the stay order from the Court, but they (accused) would not allow him to cultivate the land. The complainant alongwith aforesaid Manoj @ Balwant and Kailash asked the accused persons to adopt legal course and obey the Court orders. When the complainant questioned their entry into the house of the complainant and beating them, Subhash son of Prahlad came into anger and gave a lathi blow over the left lower leg (pindli) and Kishan son of Ram Singh resident of Jajuka also gave a lathi blow over the left leg of the complainant. In the meantime, Subhash son of Madan also gave three lathi blow over the left shoulder of Manoj @ Balwant, whereas, Subhash son of Prahlad gave lathi blow over the left eye of Kailash son of Khichu @ Mahender with an intention to cause injuries. The other accused also given filthy abuses to the complainant, Manoj and Kailash after entering into the house of the complainant. They even threatened that they would be killed if they will initiate any proceedings against them.

After hearing the noise of the quarrel, Jaibir son of Har Chandi and Mahender Pal Singh son of Surjit Singh, Jagat Singh son of Ram Ji Lal

and other persons also reached the spot and rescued the complainant, Manoj and Kailash from the clutches of the accused persons.

In support of his version, the complainant has examined CW1 Manbir son of Munshi, CW2 Jaibir son of Harchand, CW3 Manoj son of Chainpal and CW4 Kailash son of Kichhu and placed on record the documents namely Ex.C1 copy of order dated 30.9.2011, Mark-A application moved before the DSP, Nuh, Mark-B copy of MLR dated 30.9.2011 of injured Manbir, Mark-C copy of MLR dated 30.9.2011 of injured Kailash, Mark-D copy of MLR dated 30.9.2011 of injured Balwant, Mark-E copy of FIR and Mark-F copy of charge-sheet. Thereafter, the preliminary evidence was closed and on the basis of oral as well as documentary evidence, the trial Court vide order dated 9.6.2014 summoned the accused to face trial under Sections 149, 323, 452, 506 and 120-B IPC.

After considering the evidence, so adduced by the complainant, the trial Court had noticed the allegations of beating only against the accused Subhash son of Prahlad, Subhash son of Madan and Kishan son of Ram Singh. No other independent witness was examined by the complainant, who can testify that all the accused persons named by the complainant were present inside the house of the complainant. The complainant has made allegation of giving beatings by 17 persons and no serious injury has been suffered by any of the complainant, trial Court did not frame charge against the other accused except Subhash son of Prahlad, Subhash son of Madan and Kishan son of Ram Singh. Accordingly, these accused were charge-sheeted by the trial Court under Sections 323, 452,

506 read with Section 120-B IPC vide order dated 16.3.2016.

Since charges were not framed against the other accused, the petitioner has filed the revision against the order dated 16.3.2016, but the same was dismissed by learned Additional Sessions Judge, Mewat vide order dated 28.7.2016. It is in these circumstances, the petitioner has filed the present revision impugning the order dated 16.3.2016 passed by learned Judicial Magistrate 1st Class, Mewat whereby all the accused except accused Subhash son of Prahlad, Subhash son of Madan and Kishan son of Ram Singh, have been discharged.

Challenge has also been laid to the order dated 28.7.2016 whereby against the order dated 16.3.2016 passed by learned Magistrate, revision has been dismissed by the learned Additional Sessions Judge.

Learned counsel for the petitioner has argued that the statements of CW1 to CW4 and the documents placed on record i.e. Ex. C1 and Mark-A to Mark-F are sufficient enough to support the case of the complainant-petitioner. Learned Magistrate vide order dated 9.6.2014 has rightly summoned the accused persons to face trial under Sections 149, 323, 452, 506 and 120-B IPC, but it is astonishing that at the time of framing of charge, the learned Magistrate vide order dated 16.3.2016 discharged all the accused except accused Subhash son of Prahlad, Subhash son of Madan and Kishan son of Ram Singh. Learned Magistrate has given extravagant emphasis of the offence of beating i.e. Section 323 IPC only but has erroneously exonerated the respondents-accused from the remaining offences i.e. constituting unlawful assembly, the common consensus of object,

motive after hatching conspiracy for which they forcibly entered into the house of the petitioner. Learned counsel for the petitioner has relied upon **Umar Abdul Sakoor Sorathia vs. Intelligence Officer, Narcotics Control Bureau 1999(3) RCR (Criminal) 658** and states that at the time of framing of charge, Court is not expected to go deep into probative value of materials on record and on the basis of material on record, the Court could come to conclusion that accused would have committed the offence, the Court is obliged to frame the charge and proceed with the trial. Learned counsel further relied upon **Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi) 2009(4) RCR (Criminal) 196** and states that at the stage of framing of charge, the Court has to consider the material only with a view to find out if there is ground for “presuming” that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. He further relied upon **Nagawwa vs. Veeranna Shivalingappa Konjalgi and others 1976 AIR (SC) 1947**.

I have heard learned counsel for the petitioner and perused the records.

It is the version of the complainant that the accused persons came on the spot armed with illegal weapon like lathis and farsa etc. and gave merciless beatings to him and other persons present in his house. However, the testimony of the witnesses so examined by the complainant shows that so far as the allegation of beatings is concerned, it is only confined to accused Subhash son of Prahlad, Subhash son of Madan and Kishan son of Ram Singh, who have already been summoned and against

whom charges have been framed. The record reveals that no independent witness has been examined by the complainant, who can testify that all the accused persons named by the complainant were present inside the house of the complainant. The complainant has made allegations that they were beaten up by 17 accused persons but surprisingly despite such large numbered accused persons, no serious injury has been suffered by any of the complainant persons present inside the house of the complainant including the complainant itself. Therefore, the testimony of the petitioner is highly doubted. The other injured persons have made direct allegations against accused Subhash son of Prahlad, Subhash son of Madan and Kishan son of Ram Singh. None of the witnesses examined in the pre-charge stage has testified as to what was done by remaining accused persons on the day of incident. The allegations made in the complaint are general in nature.

The complainant Manbir while appearing as CW1 has stated in his examination-in-chief that after hearing the noise, Jaibir son of Har Chandi and Mahender Pal Singh son of Surjit Singh, Jagat Singh son of Ram Ji Lal came at the spot and they rescued him, Manoj and Kailash from the clutches of the assailants. But surprisingly Jaibir, Mahender Pal Singh and Jagat Singh have also not been examined in the case, which makes the case of complainant more doubtful. The case law referred by learned counsel for the petitioner have no applicability in the facts and circumstances of the present case, more particularly when the persons, who have stated to have rescued the petitioner and other injured persons from

the assailants, have not been examined in the case. Moreover, the incident allegedly took place on 30.9.2011, whereas the petitioner has filed the complaint on 17.9.2013 i.e. after a period of two years from the date of occurrence. The delay of about 2 years in filing the complaint without any plausible explanation more particularly when there is already a civil dispute between the parties creates doubts about the occurrence. The petitioner has implicated as many accused as he can, without there being any specific attribution.

Therefore, this Court finds that the order dated 16.3.2016 passed by the learned Magistrate and order dated 28.7.2016 passed by learned Additional Sessions Judge, Mewat do not suffer from any illegality.

Therefore, the present petition is dismissed accordingly.

September 22, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No