

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM NO. M-43695 of 2014 (O&M)
Date of decision:- July 15, 2016

Suresh Sharma and another

...Petitioners...

versus

State of Punjab and another

...Respondents...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Atul Goyal, Advocate for the petitioners.

Mr. J.S. Sekhon, AAG, Punjab.

Ms. G.K. Mann, Advocate for respondent No.2.

JASPAL SINGH, J.

By virtue of this petition preferred under Section 482 of the Code of Criminal Procedure, petitioners, Suresh Sharma and Raju Kanoujiya have sought the quashing of criminal complaint No. 36, dated 06.06.2014, under Section 302 read with Section 34 IPC pending in the Court of Judicial Magistrate, First Class, Ludhiana (Annexure P-1) as well as impugned order dated 07.08.2014 (Annexure P-2), vide which the petitioners have been summoned to face trial.

2. The facts giving rise to the instant petition are that on account of death of Jagdish Chand Sharma-brother of petitioner No.1, FIR No.87, dated 06.08.2011 was registered at Police Station City Kotwali, Ludhiana, at the instance of Suresh Sharma, under Section 306 IPC against respondent

No.2-Ajay Sharma, his wife Kusam Sharma, Seema Sharma wife of

deceased, Prem Lata, mother-in-law of deceased, Raju, Vijay Sharma, Gaurav Sharma and some other persons. After expiry of approximately 2 years of the registration of the aforesaid FIR, complaint No.36, dated 06.06.2014, under Section 302 read with Section 34 IPC was lodged by Ajay Sharma-respondent No.2, in which, it has been alleged that Jagdish Chand Sharma, who was married to Seema Sharma in the year 1988 has been killed by the present petitioners by administering some poisonous substance to him in his presence as well as in the presence of Seema Sharma, one of the accused in the above referred FIR. On the strength of preliminary evidence adduced by the complainant in the aforesaid complaint, the petitioners were summoned to face trial under Section 302 read with Section 34 IPC by the Id. Magistrate vide order dated 07.08.2014, which necessitated the filing of the instant petition.

3. The contention of learned counsel for the petitioners is that the criminal complaint is absolutely false and concocted one. In fact, the same is nothing but a counter blast to the FIR No. 87 dated 06.08.2011. While lodging the complaint the actual facts have been twisted and suicide has been converted into murder. During investigation of the FIR even the suicide note was also recovered from the deceased. Even another suicide note was also recovered from the house of the deceased. In both the suicide notes, the deceased had specifically blamed his wife, brother-in-law and other members of his in-laws family. After investigation of the case got registered by petitioner No.1 against Seema Sharma and others, report under Section 173 Cr.P.C. has already been presented against respondent No.2 as well as his co-accused. Further after framing of the charges, petitioner No.1

has also been examined as a witness.

4. Learned counsel for the petitioners further contends that the complaint is nothing but a result of an afterthought which has been filed just to save their skin and the consequences of FIR got registered by petitioner No.1 and to falsely involve the petitioners so that they may not prosecute the trial against respondent No.2 and others. While referring to complaint (Annexure P-6), moved to the Commissioner of Police, Ludhiana, dated 04.10.2011, by Seema Sharma and his daughter Nehal Sharma, learned counsel for the petitioners contends that there is not even a whisper of any murder being committed by either of the petitioners. Apart from the aforesaid representation/complaint, complainant, Nehal Sharma and Seema Sharma also approached CIA staff with similar complaints alleging that petitioner No.1 has grabbed the property of Seema Sharma, in which, the inquiry was conducted by the police officials and during the course of inquiry, even the present complainant-Ajay Sharma @ Soni has also got recorded his statement before the Incharge of CIA Staff, Ludhiana on 29.09.2011 (Anexure P-7). In the said statement, there is not an *iota* of allegation that on 06.08.2011, the petitioners had committed the murder of Jagdish Chand Sharma.

5. Similarly, while referring to the statement of respondent No.2 Ajay Sharma @ Soni, learned counsel for the petitioners has submitted that he had alleged that on 06.08.2011 at about 11:00 a.m., a telephonic call was received from Railway Officer Sh. DP Singh by his sister-Seema Sharma to the effect that her husband has consumed some poisonous substance, upon which, he accompanied by his sister Seema Sharma, reached at the residential House No. 106, Railway Colony No.2 where Jagdish Chand Sharma used to live. He also came to know that his brother-in-law has died

and further that a case has been registered against him as well as Seema Sharma and others.

6. Learned counsel for the petitioners has further referred to inquiry report (Annexure P-8), conducted in pursuance to the various complaints/representations moved by complainant Ajay Sharma @ Soni, Seema Sharma and Nehal Sharma. In those complaint(s) also, it has been alleged by them that Jagdish Chand Sharma had committed suicide by consuming Sulphas tablets at Railway Colony No.2, House No.106-A, opposite Railway Station on 06.08.2011. Meaning thereby, that there is not even a slightest reference about the commission of murder of Jagdish Chand Sharma by either of the petitioners. Not only this, another complaint (Annexure P-10) was moved by Nehal Sharma, daughter of the deceased to the Hon'ble Chief Justice of Punjab and Haryana High Court, Chandigarh alleging that her father was addicted to alcohol and always used to return in the house at late hours in an inebriated condition. She prayed that mysterious death of her father and brother be looked into from the perspective of murder with the motive of grabbing the property and inquiry be got conducted from an independent higher agency. To the similar effect are the contents of the affidavit annexed with the aforesaid complaint, Annexure P-11. With the similar allegations, Seema Sharma wife of the deceased Jagdish Chand Sharma has also sworn an affidavit (Annexure P-12).

7. While concluding his arguments, learned counsel for the petitioners has contended that from the various documents referred to above, it is evident that it was never the case of complainant-respondent

petitioners but after about expiry of 2 years, complaint (Annexure P-1) was filed alleging that murder of Jagdish Chand Sharma has been committed by the petitioners, which was witnessed by respondent No.2-complainant, in which, they have been summoned to face trial under Section 302/34 IPC. Since, the complaint is nothing but a counter blast and has been filed by twisting the facts, the same is liable to be quashed, especially, when it is squarely covered within the parameters laid down by the Hon'ble Apex Court in *“State of Haryana vs. Ch. Bhajan Lal”, 1991 (1) RCR 383*.

8. On the other hand, it has been urged by learned counsel for respondent No.2 that various contentions put forth by learned counsel for the petitioners are without any legal and factual substance. In fact, petitioners had an intention to usurp the property belonging to the deceased, who have poisoned him to death and in connivance with the local police, they succeeded in getting registered a false and frivolous FIR against respondent No.2 and others. Ld. counsel further urged that suicide notes are nothing but forged, fabricated documents, which have been brought into existence by the petitioners just to strengthen their case got registered against Ajay Sharma @ Soni and others. In fact, the petitioners have tried to kill two birds with one stone. On one hand, they have implicated respondent No.2, his sister Seema Sharma and others in a false criminal case and on the other hand, they have usurped the entire property of the deceased, which actually belongs to Seema Sharma and her daughter Nehal Sharma.

9. Learned counsel for respondent No.2 has further contended that the motive behind the commission of the murder of Jagdish Chand Sharma by the petitioners and the registration of a false case is that Seema Sharma and her daughter Nehal Sharma could not succeed/inherit the property

belonging to the deceased. Even, the Will allegedly executed by the deceased is surrounded by suspicion circumstance. Jagdish Chand Sharma was only 49 years of age, at the time of his murder. It cannot be expected from a prudent person that during the prime of his youth or at the age of 49 years only, he would bequeath the entire property belonging to him, that too, by ignoring his wife and daughter.

10. Learned counsel for respondent No.2 has further urged that respondent No.2 has been running from pillar to post for justice but could not get it. Since, respondent No.2 was implicated and arrested in a false case, he as well as other members of the family could not properly pursue the matter before the police authorities. The delay in lodging the complaint, if any, has occurred due to the reason that Seema Sharma, on account of murder of her husband, was in shock and further she along with her brother and other persons were falsely implicated by twisting the facts and by converting the murder of her husband to a case of suicide. Moreover, the complaint cannot be brushed aside simply on account of delay. Even in cognizable offence(s), complaint can be lodged or the FIR can be registered after an expiry of 20 years if some facts have come to light.

11. It was next argued by learned counsel for respondent No.2 that there is no infirmity, illegality or perversity in the impugned order dated 07.08.2014 whereby the petitioners have been summoned to face trial under Sections 302/34 IPC. At the most, the various pleas taken by the petitioners can be said to be a defence, which could be raised by the petitioners at the appropriate stage before the trial court. The complaint as well as summoning order cannot be quashed or set aside and the instant petition

12. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and this Court finds substance in the contentions put forth by learned counsel for the petitioners for the reasons to be recorded herein-after.

13. Undisputably, the incident took place on 06.08.2011, in which, Jagdish Chand Sharma has lost his life. There appears some matrimonial dispute in between Seema Sharma and her husband Jagdish Chand Sharma (deceased) prior to the aforesaid incident. FIR No. 87, dated 06.08.2011 was registered against respondent No.2-Ajay Sharma @ Soni, Seema Sharma and some other persons at the instance of petitioner No.1 under Section 306/34 IPC. During investigation of the aforesaid case, two suicide notes (Annexures P-4 and P-5) were recovered. According to the contents thereof, his wife, brother-in-law, mother-in-law and some other persons against whom, FIR has been registered were named as culprits. During the course of investigation, a representation (Annexure P-6) was moved by Seema Sharma and Nehal Sharma, widow and daughter of Jagdish Chand Sharma respectively, in which, it has been alleged that on 21.05.2011 at night Jagdish Chand Sharma was beating his wife-Seema Sharma mercilessly, upon which, she made a telephonic call to her brother Ajay Kumar Sharma @ Soni. In response to the said call, he accompanied by his wife Kusum Sharma came to her house at about 10:30 P.M. After informing the police, they took away Seema Sharma in the presence of police officials. It has been further alleged in the aforesaid representation that on 06.08.2011 in the morning, her husband committed suicide by consuming Sulphas tablets in Railway Colony No.2, quarter No. 106-A, Opposite Railway Station,

Suresh Sharma and Jagdish Chand Sharma in respect of the property owned and possessed by Jagdish Chand Sharma. The allegations levelled in the aforesaid complaint were inquired into by Assistant Commissioner of Police North Ludhiana, which are found to be false and report (Annexure P-8) in this regard was submitted by him to Deputy Commissioner of Police, Ludhiana on 31.03.2012, which was duly accepted by Commissioner of Police, Ludhiana. Consequently, the complaint was ordered to be consigned.

14. For the sake of repetition, it would be significant to mention here that in the aforesaid representation, it was a specific case of suicide committed by Jagdish Chand Sharma. To the similar effect are the contents of affidavit of Nehal Sharma, daughter of Jagdish Chand Sharma (deceased) as well as Seema Sharma (Annexures P-11 and P-12 respectively) that it was a case of suicide. There is not even a slightest reference or allegation that petitioners committed the murder of Jagdish Chand Sharma.

15. Not only this, even another representation (Annexure P-10) was moved by Nehal sharma, daughter of the deceased. In the said representation, it finds mention that her father Jagdish Chand Sharma committed suicide, who left suicide note(s). It has further been categorically stated by her that her father was addicted to alcohol and always used to come late while being drunk. He used to beat her as well as her mother and further used to harass them. He used to snatch the salary of her mother every month. Her brother Chandan Sharma was also living with the family of her paternal grand-parents. They were not being allowed to meet Chandan Sharma by her uncle Suresh Kumar and grand father Kartar Chand. She has further alleged that her brother has been murdered whereas as her father has

also died. So, in this representation also, there is no reference of murder of

her father-Jagdish Chand Sharma alleged to have been committed by either of the petitioners. Rather, it has simply been requested that the death of her father and brother be looked into from the perspective of murder with the motive of grabbing the property, from an independent agency. Approximately, after an expiry of 2 years, complaint (Annexure P-2) was lodged before the Id. Magistrate against the petitioners, who have been summoned to face trial under Section 306/34 IPC vide impugned order dated 07.08.2014 (Annexure P-2).

16. From the various facts narrated above, it clearly emerges that the complaint is nothing but a counter blast to the FIR registered against respondent No.2, Seema Sharma and others, in which, the challan has already been presented against respondent No.2 as well as Seema Sharma, wife of deceased. The allegations made in the complaint are absolutely contrary to the statement made by Ajay Kumar @ Soni before the police. From the various representations made by Nehal Sharma and Seema Sharma as well as their affidavits, it can be safely concluded that allegations raised in the complaint are after thought one. Further that the complaint is a counter blast to the FIR as well as to save their skin from the consequences of the trial as well as to rope in the petitioners in a criminal case so that they may not prosecute the case against respondent No.2 and others. It can also be said that the allegations made in the complaint are so absurd and inherently improbable on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused (petitioners).

17. Further, this Court is of the considered view that the criminal proceedings are manifestly attended with malafide and complaint(s) appears

to have been instituted maliciously with an ulterior motive to wreak vengeance.

18. As far as the contention of learned counsel for respondent No.2 that there was a motive behind the commission of murder of Jagdish Chand Sharma by the petitioners is concerned, it pales into insignificance at this stage because there is no whisper of murder of Jagdish Chand Sharma alleged to have been committed by the petitioners prior to the date the complaint was lodged, that too, by twisting the facts, which otherwise does not appeal to reason. The case of the petitioners is covered within the parameters laid down by the Hon'ble Apex Court in *“State of Haryana vs. Ch. Bhajan Lal”* (supra) for quashing the FIR/complaint.

19. In the light of what has been discussed above, this Court is of the considered view that the complaint is a counter blast to the FIR No. 87, dated 06.08.2011 and further that the complaint has been filed for wreaking vengeance and to save their skin. As such, the complaint No. 36, dated 06.06.2014, under Section 302/34 IPC, summoning order dated 07.08.2014 as well as subsequent proceedings are ordered to be quashed by way of acceptance of instant petition.

July 15, 2016
sonika

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned:

(√)
Yes/No

Whether reportable:

(√)
Yes/No