

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-1971 of 2011

.....

Date of decision:26.5.2017

Mishri Chand and others

.....Petitioners

v.

Satender

.....Respondent

....

Present: Mr. Vivek Khatri, Advocate for the petitioners.

Mr. Radhey Shyam Sharma and Mr. H.N. Sahu, Advocates for
the respondent.

.....

Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of criminal complaint No.348-1/28.7.2004 (Annexure-P.3) and impugned order dated 23.5.2006 (Annexure-P.4) passed by learned Judicial Magistrate Ist Class, Hisar, by which the learned trial Court has entertained the complaint of the respondent/complainant and issued summoning orders against the present petitioners by ignoring the basic principles of law and in order to prevent the abuse of the process of law and to secure the ends of justice.

Notice of motion has been issued in this case.

Mr. Radhey Shyam Sharma and Mr. H.N. Sahu, learned Advocates have put in appearance on behalf of the respondent and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

During the pendency of the proceedings, the petition qua petitioners No.1 to 3 had been withdrawn and this petition was only contested on behalf of petitioners No.4 and 5-Dr. Om Parkash Dharniwal and Dr. Suraj Kamboj, Medical Officers of Civil Hospital Fatehabad.

At the time of arguments, learned counsel for the petitioners No.4 and 5 argued mainly on two points, firstly, that the allegations of the complainant that false MLR and X-ray report had been prepared by these petitioners are not supported and corroborated by any cogent evidence. He argued that there is no finding of any kind by any Court that these documents are falsely prepared. Secondly, he argued that both the doctors are public servants and before filing this complaint, no sanction under Section 197 Cr.P.C. has been obtained by the complainant. The Court has taken the cognizance of the complaint without any sanction from the competent authority under Section 197 Cr.P.C.

On the other hand, learned counsel for the respondent admitted that no sanction has been obtained under Section 197 Cr.P.C. However, learned counsel for the respondent argued that the complainant had not caused any injury to Mishri Chand, Virender etc. and the MLR and X-ray reports had been falsely prepared by these petitioners. Mishri Chand and Virender remained posted in the same hospital. Learned counsel for the respondent also argued that there was other nearby Government Hospital, but the accused had gone to the hospital at Faridabad, therefore, conspiracy is proved from the facts of the case.

After hearing learned counsel for the parties and going through

the record, I find that first of all sanction under Section 197 Cr.P.C. is required before the Court takes cognizance against the public servant qua the acts done by them in performance of their public duty.

Keeping in view the facts and circumstances of the present case that the petitioners No.4 and 5 Dr. Om Parkash Dharniwal and Dr. Suraj Kamboj conducted the MLR and X-ray on the person of the private accused and further the FIR had been registered against the present complainant etc. and after investigation the Police had already filed the report under Section 173 Cr.P.C. and further the trial Court has already framed the charges against the complainant etc. and cognizance has been taken by the Court and further there is no finding by Court or any Senior Officer of the Department regarding falsely preparing the MLR etc., therefore, in these circumstances the sanction under Section 197 Cr.P.C. is necessary before taking the cognizance.

Therefore, on this ground alone, this complaint is liable to be quashed against the petitioners No.4 and 5 Dr. Om Parkash Dharniwal and Dr. Suraj Kamboj.

Further from the record, I find that it is admitted fact that on the basis of MLR and X-ray report and on the statement of the private petitioners the FIR was registered and investigation was conducted by the Investigating Officer. The Investigating Officer has nowhere found that the MLR or X-ray report had been falsely prepared. Rather, after investigation, he presented the challan/final report under Section 173 Cr.P.C. against the complainant etc. The Court from the record has found *prima facie* case

[4]

against the complainant of this case and the trial is still pending before the trial Court qua that FIR. The trial Court has nowhere given any finding till now that the MLR or X-ray report were falsely prepared. Even in the preliminary evidence, no Expert has given opinion that this fracture or injuries cannot be received by the injured. Merely, the accused feels that this MLR and X-ray report had been falsely prepared is not sufficient to summon the doctors, who prepared the MLR and X-ray report while performing their duties. All these facts as to why the injured had not gone to Hisar, which is at a distance of 25 kms., had gone to Faridabad, which is at a distance of 40 kms. etc., is alone not sufficient to find sufficient grounds to summon the petitioners.

Therefore, from the above, I find that the filing of the complaint against the present petitioners is nothing but an abuse of the process of law and amounts to miscarriage of justice. Consequently, the present petition is allowed and the criminal complaint No.348-1/28.7.2004 (Annexure-P.3); impugned order dated 23.5.2006 (Annexure-P.4) as well as all subsequent proceedings qua petitioners No.4 and 5 Dr. Om Parkash Dharniwal and Dr. Suraj Kamboj are hereby quashed.

May 26, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No