

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

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**CRM-M-24865 of 2012.
Date of Decision: 03.08.2017.**

Sunil and others

....Petitioners.

Versus

Ranbir Singh and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. D.S. Bali, Senior Advocate with
Mr. Rahul Sharma, Advocate for the petitioners.
Mr. Parmod Parmar, Advocate for respondent No.1.

Mr. Sulinder Kumar, Assistant Advocate General, Haryana
for respondent No.2.

Ramendra Jain, J.(Oral)

Prayer in the instant petition under Section 482 of the Code of Criminal Procedure has been made for quashing the complaint No.11 dated 17.01.2009 (Annexure-P3) under Sections 148, 323, 342, 452 and 506 read with Section 149 of the Indian Penal Code; summoning order dated 27.03.2010 (Annexure-P4) passed by Judicial Magistrate Ist Class, Jhajjar and judgment dated 30.04.2012 of learned Additional Sessions Judge, Jhajjar, affirming the aforesaid summoning order (Annexure-P4) in revision.

Briefly stated, petitioner No.1 Sunil Kumar got registered an F.I.R. No.239 dated 17.12.2008 under Sections 323 and 325 read with Section 34 I.P.C. at Police Station, Salhawas pursuant to D.D.R. No.30 dated 01.12.2008 against respondent No.1 to the effect that on 01.12.2008 during trial, a Panchayat was convened consisting of respondent No.1-

Ranbir Singh, Ex.Sarpanch, at Village Chowk to resolve the dispute between Baniya community over a plot. Respondent No.1-Ranbir Singh objected to the participation of father of the complainant-petitioner No.1-Sunil Kumar during discussion, whereupon an altercation took place amongst them. Resultantly, Sunil Kumar was sent by the Panchayat to his home. Respondent No.1 Ranbir Singh took ill of the said incident and left for his house. After some time, when complainant Sunil Kumar was returning after purchasing household articles from the shop of one Dalip, 4-5 persons inclusive of respondent No.1 Ranbir Singh, his sons Bhim Singh and Chand, Naveen son of Ramal, Devinder and Rajinder sons of Ajit, armed with Jailis and Lathis, alighted from a vehicle bearing No.HR-20F-9864 and caused injuries to the complainant turn by turn. Raising alarm by complainant Sunil Kumar, attracted one Pawan Kumar son of Krishan and thereafter, the aforesaid assailants by boarding their vehicle, sped away. While leaving the spot, they had threatened to kill the complainant.

The police, after thorough investigation, submitted a final report under Section 173 Cr.P.C. in the Court against respondent No.1 and three others. Accordingly, they were charge-sheeted under Sections 323 and 325 read with Section 34 I.P.C.

Respondent No.1 too moved an application against the petitioners on that very date i.e. 01.12.2008 before the S.H.O., Police Station, Salhawas mentioning that the petitioners herein, had caused him injuries with Lathis and Dandas. Even petitioner No.7 Shri Ram exhorted that he would bring 20 Gundas from Delhi and abduct the whole family of respondent No.1. When the police did not take any action against the petitioners, he (respondent No.1) filed a private complaint (Annexure-P3)

on 17.01.2009 in the Court of Judicial Magistrate, Jhajjar against them under Sections 148, 323, 342, 452 and 506 read with Section 149 I.P.C., in which the petitioners were summoned vide impugned order dated 27.03.2010 (Annexure-P4). The revision against the aforesaid summoning order, was dismissed vide judgment dated 30.04.2012 by the Revisional Court, Jhajjar.

Learned Senior counsel for the petitioners contended that in the application (Annexure-P5) moved on the very date of the incident i.e. 01.12.2008, respondent No.1 alleged that the incident of beating him with Lathis and Dandas by the petitioners had occurred “yesterday” around 11:00 a.m., meaning thereby that the alleged beating was given to respondent No.1 by the petitioners, the “previous” day i.e. on 30.11.2008, but in his complaint (Annexure-P3) before the Court of Judicial Magistrate, respondent No.1 asserted that the incident took place on 01.12.2008. The above contradiction regarding the date of the incident falsifies the entire story of respondent No.1. Learned trial Court failed to take note of the above contradiction in the story put forth by respondent No.1 and thus, had wrongly summoned the petitioners. The complaint filed by respondent No.1 is malicious on the face of it, inasmuch as it is a counter blast to the F.I.R. got registered by petitioner No.1 against him.

Learned Senior counsel further drawing attention of this Court towards MLR Ex.C1 mentioning four injuries on the person of respondent No.1 at the time of his medico legal examination by CW4 Dr. Sanjay Kumar of C.H.C. Jamalpur, District Jhajjar at 7:00 p.m. on 01.12.2008, urged that the fact of suffering of alleged injuries within duration of 24 hours itself makes clear that none of the injuries on the person of respondent No.1, was

“fresh” one, rather were suffered by him within a long duration of 24 hours. Therefore, there is probability that respondent No.1 might have received the alleged injuries on 30.11.2008. In the above circumstances, the story put forth by respondent No.1 in his complaint, that he had received injuries at the hands of petitioner No.1 on 01.12.2008, is completely false from this angle too, being contrary to his earlier version in complaint Ex.P5 before S.H.O., Jhajjar. The Revisional Court, without discussing the above contradiction in the story of respondent No.1, illegally uphold the summoning order and maintainability of the complaint without giving any reasoning, simply observing that there was a prima facie case for summoning the petitioner.

On the other hand, learned counsel for respondent No.1 contended that in his statement before the Court, CW4 Dr. Sanjay Kumar, did not testify the duration of injuries suffered by respondent No.1. Respondent No.1 appeared in the witness box before the trial Court as CW5 and categorically deposed about causing of injuries to him by the petitioners on 01.12.2008. Application (Annexure-P5) was written by the police official on behalf of respondent No.1 and his signatures were obtained over it without disclosing its contents to him, therefore, the contents of the said application are not binding upon respondent No.1. The impugned summoning order and the judgment of the revisional Court affirming the same are perfect and legal.

I have given anxious consideration to the submissions made by both the sides.

Filing of application (Annexure-P5) by respondent No.1 before

S.H.O., Police Station, Salhawas on 01.12.2008 is not in dispute, inasmuch

as respondent No.1, in his complaint Ex.P3, has specifically mentioned this fact. More so, during course of hearing, the moving of said complaint (Annexure-P5) by respondent No.1 to the police, is not denied, perusal of which shows that respondent No.1 has specifically mentioned that “yesterday” around 11 AM, when he was sitting in his shop, the petitioners came there and caused him injuries with their respective Dandas and Lathis. The above recital unambiguously makes clear that the incident of beating by the petitioners to respondent No.1, had taken place on 30.11.2008.

Contrary to it, in the complaint (Annexure-R3), respondent No.1 has shown the incident of beating to him by the petitioners as on 01.12.2008. Learned counsel for respondent No.1 has not been able to clarify the aforesaid ambiguity/contradiction as to the time and date of incident in his both the complaints. Therefore, this Court finds force in the argument of learned counsel for the petitioners that the filing of the impugned complaint (Annexure-P3) is a malicious act on the part of respondent No.1, inasmuch as is a counter blast to the F.I.R. got lodged by petitioner No.1 against him.

In **1991(1) R.C.R. (Criminal) 383, State of Haryana and ors. vs. Ch. Bhajan Lal and ors.**, Hon'ble Apex Court has laid down that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive of wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, in such cases, powers conferred by Section 482 Cr.P.C. and Article 226 of the Constitution of India cannot be exercised.

This Court is not in agreement with the submission of learned counsel for respondent No.1 that the contents of application (Annexure-P5)

are not binding upon respondent No.1 as the same was written by a police official and its contents were not read over to him before obtaining his signature for the simple reason that respondent No.1 did not allege this fact in his complaint (Annexure-P3) at any point of time, inasmuch he never raised any objection to the contents of the same. Had it been so, respondent No.1 must have pleaded this fact in his complaint being a material fact.

The stand of the petitioners that the impugned complaint (Annexure-P3) is an abuse of the process of law, is also fortified from the M.L.R. Ex.C1, proved by CW4 Dr. Sanjay Kumar, wherein the duration of the injuries, allegedly, suffered by respondent No.1, is shown to have suffered within 24 hours. Had the injuries been suffered by respondent No.1 on 01.12.2008, in that eventuality, the same would have been shown as “fresh” one, within a duration of 6-8 hours as respondent No.1 was medico legally examined at 7:00 p.m. on 01.12.2008.

I have gone through the impugned summoning order and the judgment of the revisional Court. No sound reasoning has been given by both the Courts below for summoning the petitioners.

In view of the discussion made above, instant petition is accepted. The impugned summoning order dated 27.03.2010 (Annexure-P4) passed by Judicial Magistrate Ist Class, Jhajjar and the impugned judgment dated 30.04.2012 of learned Additional Sessions Judge, Jhajjar, dismissing the revision of the petitioners and affirming the aforesaid summoning order (Annexure-P4) are hereby set aside. Resultantly, the Complaint bearing No.11 dated 17.01.2009 (Annexure-P3) under Sections 148, 323, 342, 452 and 506 read with Section 149 I.P.C. is dismissed, being false and

maliciously instituted with an ulterior motive of wreaking vengeance on the petitioners inasmuch as, it is a counter blast to the F.I.R. got registered by petitioner No.1 against respondent No.1.

(RAMENDRA JAIN)
JUDGE

03.08.2017
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Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No