

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 32276 of 2017 (O&M)

Date of decision : 20.11.2017

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Suresh

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sajjan Singh, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

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H. S. Madaan, J.

This petition under Section 482 Cr.P.C., for protection of life and property of the petitioner and his family at the hands of respondents No. 4 to 7 and their accomplices and also for transferring the investigation of case FIR No. 0389 dated 20.7.2017, under Section 307 and 34 IPC and Section 25 of Arms Act, registered with Police Station, Sampla, District Rohtak (Haryana), to CBI, CID or to a senior officer not below the rank of Superintendent of Police, has been filed, inter alia contending that son of the petitioner, while going to house of his friend in the same village was attacked by Amit @ Kala s/o Yash Pal, Mukesh, Rakesh and Rajesh – sons of Samar Singh, respondents No. 4 to 7, respectively, by opening fire on them.

As a matter of fact, FIR was registered on the basis of written

application submitted by the petitioner contending that petitioner is a permanent resident of village Baliyana and an agriculturist by avocation. He has two sons namely, Sunil and Shubham, both unmarried. On 30.5.2017, at around 10.30 P.M. Shubham alongwith his friend from their village, namely, Vijay s/o Jai Pal, was going home in car No. HR-26BX-1728; that in the meanwhile, accused Amit @ Kala, Mukesh, Rakesh and Rajesh, residents of the same village, were standing in the street with weapons. Accused Amit fired shots upon Shubham and Vijay travelling in the car, but both of them had a miraculous escape. Then Rakesh fired a shot hitting left lamp light of the car. It crossed the door of the car touching the iron plate at the back of driver seat. Then Rajesh and Mukesh fired him their weapon, but they missed their target. The motive and grudge for the attack was that brother of Vijay is a witness in a murder case, wherein Rajesh had committed the murder of Sanjay s/o Dayanand, resident of Baliyana. All the four accused had attacked with an intention to take revenge. After the assault, when petitioner went to IMT Kheri Shad Rohtak, for taking action against the accused persons, then a case under Section 394 IPC was got registered against son of the petitioner i.e. Shubham and his friend and all the four persons made casteist remarks against Vijay warning him saying "Jogi ke leave the village otherwise we will kill you". Many cases of murder and attempt to murder are already pending against such four accused persons and car No. HR-26BX-1728 is still parked at Police Post of IMT Kheri Shad. Therefore, necessary action be taken.

According to the petitioner, despite registration of FIR, that

too when the petitioner had approached Human Rights Commission, the police is not arresting the accused persons, who are openly threatening the petitioner and his family members, so as to make them compromise the matter. The petitioner has submitted a representation to the higher police officers, but to no effect. Therefore, petitioner contends that investigation of the case FIR No. 0389 dated 20.7.2017, under Section 307, 34 IPC and Section 25 of the Arms Act, registered with Police Station Sampla, District Rohtak, Haryana, be transferred to CBI, CID or any other independent agency or to a senior officer not below the rank of Superintendent of Police and life and liberty of the petitioner and his family members may be protected and that necessary direction be issued to Investigating Agency to take appropriate legal action against the accused persons.

Notice to respondents No. 1 to 3 was ordered to be issued. The had put in appearance and reply by way of affidavit of Deputy Superintendent of Police (Crime), Rohtak, has been filed, wherein preliminary submissions have been made, contending that the investigation has been carried out by the present Investigating Officer/respondent No. 3, as well as by SHO, PS Sampla – respondent No.2, honestly, sincerely and all the facts have been duly verified by DSP Vijay Singh; that petition of the petitioner is not maintainable, since during the course of investigation it was revealed that Shubham son of the complainant and Vijay on 30.5.2017 had kidnapped and snatched cash amount from one person from IMT Rohtak and when they were crossing in front of the house of respondent No.7 Rajesh, the car driver tried to hit him and security guard of Rajesh namely,

Amit fired on the car to save the life of Rajesh and no firing was done by respondents No. 4 to 7; that one Sandeep @ Padu is having criminal background and he was nursing personal grudge against Rajesh and later on complainant in collusion with said Sandeep @ Padu, got lodged the present FIR; that Sh. Vijay Singh, DSP Rohtak, also verified the facts and recorded the statements of witnesses and a cancellation report has been prepared and forwarded on 5.9.2017 to the Superintendent of Police, Rohtak; that the case FIR No. 259 of 2017 under Sections 342, 365, 379-B IPC and 25, 54, 59 Arms Act, Police Station Sampla, was got registered against son of the complainant and Vijay and they are in judicial custody in the said case. Further more, the complainant-petitioner is not the eye witness of the alleged incident. On merits, these pleas were reiterated, while praying for dismissal of the petition.

I have heard learned counsel for the petitioner and the learned State counsel, besides going through the record and I find that no ground for transferring the investigation to CBI/CID or to a senior officer not below the rank of Superintendent of Police, is made out. None of the private respondents, is such an influential person, who could be in a position to interfere with the investigation. Respondent No. 6 Rakesh, is stated to be employed with police, but his exact rank and place of posting could not be informed by counsel for the petitioner. Interestingly, in the petition no such plea has been taken. At the most what one can gather from the contentions raised by counsel for the petitioner is that Rakesh may be having rank of constable or Head Constable, posted at a public place, such lowly

placed police official being able to manipulate the things at the level of SHO, Superintendent of Police, does not seem plausible and probable. The investigation cannot be transferred just because a person describes so, unless compelling reasons are there to pass an order in that regard.

There is nothing to show that the investigation has not been conducted in a fair and impartial manner. The investigating agency is shown to have reached the conclusion that there is no merit in the assertions in the FIR, resultantly preparing a cancelation report. As per law and procedure, such report on being filed in the court, the petitioner – complainant would get notice and he can then appear in the said court, file protest petition, praying for further investigation of the case and if so, desired, to get it treated like a criminal complaint and then pursue it. Even otherwise, independent of that, petitioner has got a right to file a private complaint.

Further more, there is no requirement of issuance of direction that investigation be carried out by some senior officer not below the rank of Superintendent of Police or by some Special Investigating Agency. The petition seems to have been filed as a pressure tactics, otherwise no merit in the same comes out to be there. From the petition it could not be made out that private respondents have been threatening the petitioner or he had genuine apprehension of some harm being caused at their hands. Nevertheless as regards the alleged threats received by the petitioner, Superintendent of Police, Rohtak is directed to consider as to whether any threat perception to the petitioner is there, which may call for taking up any action in that

matter and if it is found that such threat perception is actually there, then suitable remedial action may be taken at the earliest.

With such observations, the petition stands disposed of.

(H.S. Madaan)
Judge

20.11.2017		
chugh	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No