

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

**Criminal Misc. No.M-12040 of 2013 (O&M)
Date of Decision: October 25, 2018**

Bhupinder Singh

.....PETITIONER(s).

VERSUS

Mohinder Singh

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pankaj Bhardwaj, Advocate
for the petitioner (s).

Mr. Tejinder Pal Singh, Advocate
for the respondent.

SURINDER GUPTA, J.

Petitioner has sought quashing of complaint ID No.031603001822007 complaint No.28 of 20.09.2007 titled as *Mohinder Singh Vs. Bhupinder Singh and others*, dated 20.09.2007 filed under Sections 308, 323, 148 read with Section 149 of Indian Penal Code pending in the Court of Judicial Magistrate 1st Class, Malerkotla and summoning order dated 23.02.2013 along with all subsequent proceedings arising therefrom.

The petitioner got registered FIR relating to the incident dated 04.08.2014 translated, copy of which has been placed on file by the petitioner as Annexure P-2, operative part of which reads as follows:-

“I am resident of the above mentioned address and is the vice Chairman of the Khadi Gram Udhog Workers

Union, Sangrur. I have moved applications regarding the factory of Mohinder Singh son of Gurcharan Singh, resident of Ward No.4, Ahmedgarh to the Pollution Department, Sangrur. Yesterday on 4.8.2004 at about 12.00 Noon, the officials of the Pollution Department came for enquiry on my application. My daughter Dr. Shiv Dit informed me on phone that the officials of the Pollution Department have come for the enquiry and are calling you. At that time, I was sitting at Khadi Bhandar, Ahmedgarh with Rashid Ahmad, manager. I immediately reached near my house on the scooter of Rashid Ahmad. There was a gathering of 15/20 men and women near my house. I (sic) went inside my house and sat in the drawing room along with my daughter Shiv Dit, son Bhagwant Singh and another daughter Tarsem Kaur and there Rashid Ahmad and Sukhwant Singh son of Sucha Singh resident of Bhai Vir Singh Road were also sitting with us. Then after 10/15 minutes Mohinder Singh, Bhinder Singh, Jeeta Singh sons of Gurcharan Singh, skilled men (sic mason) armed with lathis, resident of Ward No.4, Malkiat Singh son of Harchan Singh, Jat armed with lathi, resident of Ward No.4 and Joginder Singh son of Gurnam Singh, empty handed, resident o Bhagat Singh Chowk, Ahmedgarh and Sukhdev Kaur wife of Malkiat Singh, Bhupinder Kaur wife of Mohinder Singh, resident of Ward No.4, Ahmedgarh trespassed into our house by calling bad names and raising Lalkara and on reaching there Sukhdev Kaur and Bhinder Kaur started dragging my daughter Shiv Dit Kaur after putting her Dupatta around her neck and Malkiat Singh and Joginder Singh embraced and caught hold of me and Malkiat Singh bite me by tooth on the left hand thumb and Joginder Singh started beating me. Mohinder Singh caught hold of my

son Bhagwant Singh by embracing him and Bhinder Singh and Jeeta Singh sons of Gurcharan Singh started beating him and broke the glasses of my house and also caused more damage and Bhinder Singh gave a lathi blow to Bhagwant Singh which hit on his left arm. We raised raula "*Mar Ditta Mar Ditta*," When Rashid Ahmad and Sukhwant Singh and my daughter Tarsem Kaur intervened to rescue us then the above mentioned persons pushed Tarsem Kaur which resulted in her falling down and (she) got (sic suffered) injury from some article on her right arm. The entire occurrence was witnessed by Rashid Ahmad and Sukhwant Singh. All the above mentioned persons and ladies ran away from the spot alongwith their arms (lathies). Then Rashid Ahmad took me on his scooter and admitted me in civil hospital, where I am under treatment. While going, the above mentioned persons have also threatened us with dire consequences."

The accused named in the FIR came up with cross-version regarding the incident and the matter was inquired by police authorities at various levels. The petitioner has placed on file copy of the report dated 08.10.2004 submitted by Superintendent of Police (Detective), Sangrur, wherein he found that version of the petitioner that accused named in the FIR entered his house, caused him injuries, smashed and damaged the glass of his house etc. was not correct. The occurrence in fact took place in the street in which simple injuries with blunt weapon were caused to the petitioners. In this regard, he observed as follows:-

"Furthermore, the offence under Section 452 IPC is not found to be committed by Mohinder Singh and party as neither of the party entered into the houses of each other.

The injuries which are suffered by Bhupinder Singh and his party are simple and blunt in nature and are outcome of altercation.”

Regarding the cross-version and the injuries suffered by Surjit Kaur which were declared dangerous to life, he reported as follows:-

“On the other hand, from the statements given by Mohinder Singh and his party and from the enquiry conducted at the spot, it is found that the injury which was received by Surjit Singh mother of Mohinder Singh, age 65 years on her head, was not suffered at the hands of any one. Rather when the altercation was taking place in the street, then Surjit Kaur was also standing there. She suffered a push when the ladies of both the side scuffled with each other and she suffered a fall near the edge of drain and due to which she suffered an injury on the back side of her head. In this regard, a fresh opinion was taken from the same doctor who earlier gave his opinion regarding the injury of Surjit Kaur as “may prove dangerous to life”. As per the opinion of the said doctor, the injury has been shown to be caused to Surjit Kaur due to fall. The report is annexed. Therefore, offence under Section 308 IPC is not found to be committed by the complainant Bhupinder Singh and party.”

It appears that no action was taken by the police in the cross-version and the final report in the FIR registered on the statement of petitioner was filed in the Court. Respondent Mohinder Singh filed complaint in Court giving his own version regarding the incident in para 4 to 7 of the complaint as follows:-

“4). That on 04.08.2004, the officials of the pollution board came to the complainant on the

application submitted by the accused No.1. They asked the complainant that they want to run and check the machine of the complainant being used for manufacturing of cutters to verify whether the said machine is creating nuisance and emitting smoke or not.

5). That at that time, my mother Surjit Kaur and my wife Bhupinder Kaur were sitting in front of my house. I went inside to start the machinery. When I reached inside, I heard loud noise of altercation and I immediately came outside. Then I saw that all the accused had caught hold of my wife and Shivdit Kaur, accused No.2 by putting her dupatta around the neck of my wife, tried to strangulate her. Bhagwant Singh accused No.3 tore off the clothes of my wife. The accused No.1 Bhupinder Singh had forcibly caught hold of my wife.

6). That my mother came forward to save my wife, then Bhupinder Singh, accused No.1 and his elder daughter namely Tarsem Kaur i.e. accused No.4 caught hold of my mother. Bhagwant Singh, the accused No.3 hit a brick bat on the head of my mother. Due to said injuries, caused by brick bat, my mother Surjit Kaur got seriously injured and at that time, Joginder Singh Pardhan son of Gurnam Singh, resident of Bhagat Singh Chowk, Malviat Singh son of Harcharan Singh and Smt. Sukhdev Kaur wife of Malkiat Singh witnessed the entire occurrence.

7). That due to the injury, caused on the head, my mother Surjit Kaur got seriously injured and she was immediately got admitted in Civil Hospital, Ahmedgarh for treatment. My mother Surjit Kaur was medically examined by doctor on 04.08.2004. The doctor, after conducting the X-ray and CT scan of my mother, informed me that the life of my mother is in danger and her condition is deteriorating. After arranging an

Ambulance, we took our mother Surjit Kaur from Civil Hospital, Ahmedgarh to Arora Neuro Centre, Ludhiana, where my mother remained admitted from 04.08.2004 to 20.08.2004. The copy of the MLR and the copy of the opinion of the doctor are enclosed herewith.”

Complainant has specifically stated in his complaint that he has been approaching the police authorities and making representations, time and again but no action was taken on his complaint.

After recording preliminary evidence, learned trial Court did not find any case to summon Shiv Dit Kaur, Bhagwant Singh and Tarsem Kaur to face trial. However, prima facie case was found against the petitioner and he was ordered to be summoned to face trial for the offence punishable under Section 308 IPC. While passing the summoning order, the trial Court took note of the FIR registered on the statement of petitioner and the report by DSP(D), Sangrur while discussing facts of complaint:-

“One FIR N.104 dated 05.08.2004 was registered against accused Bhupinder Singh (sic Mohinder Singh) etc. DSP (D), Sangrur after conducting inquiry had suggested to present challan U/S 308 IPC against accused Bhupinder Singh but the police of P.S. Ahmedgarh got prepared their own report U/s 173 Cr.P.C. so that challan against accused could be presented in the court. After that accused moved an application to SP(D), Sangrur. They connived with the police officer and got cancelled the case which was registered against them and also got favour not to present the challan against the accused, whereas accused got presented the challan against complainant and others u/s 323, 506, 427, 148, 149 IPC and the challan was numbered as 97 of 24.11.2004. Then complainant moved an application to the D.I.C.

(D.I.G.) Patiala Range, which was marked to DSP Sherpur. As the inquiry had already been conducted by higher officials of Sangrur, (sic police) then it was again marked to SP(D) Patiala who after inquiry suggested SSP Sangrur to present challan against the accused but even then accused, in connivance with I.G. Patiala Range got favour of not presenting challan against accused. After presentation of challan against complainant, complainant requested the higher police officials to present the challan against accused but they refused to do so.”

Learned Magistrate took note of the medical and ocular evidence on record while observing that a prima facie case is made out against the petitioner and summoned him to face trial.

Learned counsel for the petitioner has argued that complaint was filed in the year 2007 i.e. 3 years after the occurrence and offence under Section 308 IPC is not made out from the medical report.

So far as the delay in filing the complaint is concerned, same is not material while seeking quashing of the complaint. Occurrence is not disputed. Learned trial Court has taken note of the fact that respondent-complainant had been moving one application after the other, but police had indulged in repeated inquiries while opting not to file any challan against the petitioner. Dr. S.K. Bansal, Neuro-Surgeon had declared injury on the person of Sukhdev Kaur as dangerous to life, as such, his statement cannot be discarded at this stage. Even otherwise, the trial Court will first proceed to record pre-charge evidence before considering to frame charge. It was at the stage of framing of charge, the trial Court will be in a position to observe as to which offence, if any, is made out against the petitioner.

From the facts of the case as discussed above, I do not find the complaint filed by respondent Mohinder Singh as misuse of the process of Court. The respondent-complainant had been presenting his case before the police and on being unsuccessful, he had no other option except to file the complaint, which is required to be taken to some logical conclusion.

This petition has no merits. Dismissed.

October 25, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***