

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11573 of 2014

Date of Decision : 09.07.2018

Ram Swaroop and another

.....Petitioners

VERSUS

Hari Om Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present:- Mr. N.S. Shekhawat, Advocate
for the petitioners

Mr. Gaurav Gogna, Advocate
for Mr. Gaurav Mohunta, Advocate
for the respondent.

* * * *

SURINDER GUPTA, J.

This is petition seeking quashing of complaint titled as "*Hari Om Sharma vs. Ram Swaroop Chauhan and others*" bearing complaint no. 737 RT/21.08.2010 and summoning order dated 17.01.2014 passed by learned Judicial Magistrate 1st Class, Rewari, summoning petitioners and others in that complaint..

2. Respondent, who is an advocate, filed complaint against 14 persons including Deputy Superintendent of Police, SHO Police Station Kasola, SHO Police Station Bawal and other police officials with the allegations that on 31.03.2010 at about 08.30 p.m., he was going home from court, when his car was stopped by white Swift car bearing no. HR-36-M-9988 near Uni Product India Limited factory. Jaipal, Vijay Yadav and Suresh @ Satbir (non petitioners) alongwith petitioner no. 2-Gagan Chauhan and petitioner no. 1-Ram Swaroop Chauhan opened door of vehicle of respondent without his permission and took him out. They alongwith 3/4

motorcycle riders assaulted and damaged his car with iron rod. Thereafter, accused no. 1 to 5 i.e. petitioners, Jaipal, Vijay Yadav and Suresh took respondent inside the factory premises of Uni Product India Limited and gave him beatings. They snatched a sum of ₹17,000/- from him and threatened that if he appears in case against them under Section 302 IPC, he will be put to death. Accused no. 2 and 4 took away his mobile and after giving him beatings threw him out of the factory premises. The complainant got into his car and informed SHO Kasola through a call made on mobile no. 9992929593 but the police took no action. He got himself medically examined. The entire incident was witnessed by Veer Singh resident of Sanghwari, who apprised respondent that accused after taking him in the factory premises were breaking windows of his car. He was also apprised that accused no. 9 to 14 i.e. DSP Puran Chand, SHO Inspector Ram Avtar, SHO Inspector Ram Kanwar, ASI Karan Singh, ASI Kamlesh, MHC Sant Lal were colluding and helping other accused and have destroyed the evidence of complainant in order to harm him. In support of his case, complainant himself appeared as PW-1 and besides formal witnesses examined PW-8 Ashok son of Om Parkash as eye-witness.

3. Learned Magistrate was hesitant while accepting version of respondent and ordered summoning of accused, namely, Ram Swaroop, Gagan Chauhan (petitioners), Jaipal, Vijay Yadav and Suresh. The relevant observations of learned Magistrate are reproduced as follows:-

"5. I have heard the arguments and perused the file. The initial version of the complainant was one Veer Singh was witness to the incident but PW-8 is one Ashok Kumar. The complainant has also stated that he got to know later on the names of the persons on the motorcycles. But from whom it is not

clear. No link has been established to show how he gathered their names. He also mentions that accused no. 9 to 16 have colluded with the accused no. 1 to 8. However, apart from the arguments and pleadings there is little on the file to show this collusion.

However, the complainant has named the persons travelling in the Swift car and the doctor has also deposed about the complainant being injured. The nature of injury is submitted to be caused by blunt force and time duration within 24 hours. Also placed on the file is the bill receipt of puliyani motors about repair of the car belonging to the complainant.

In view of the above, although no prima facie case seems to be made out against accused no. 6-14, a case under sections 323, 324, 427, 506, 120-B of IPC seems to be made out against accused Ram Swaroop, Gagan Chauhan, Jaipal, Vijay and Suresh. They accordingly be summoned for 02.04.2014."

4. Before proceeding further it will be relevant to have a look of the facts which are not disputed and are enumerated as follows:-

- (i) DDR No. 63 dated 09.04.2010 was registered at Police Station Kosla, District Rewari on the statement of Sandeep Kumar regarding the incident dated 31.03.2010 at 09.00 p.m. i.e. at the same time and place when respondent has alleged the present incident with him. The allegations in DDR on the basis of which FIR No. 63 dated 09.04.2010 was recorded, copy of which has been placed on file as Annexure P-6, which reads as follows:-

"....It is stated that I am resident of aforementioned

address and I work as a driver in Narsingh Ji Enterprises Company, Pachor as driver and I draw the salary of ₹5000/- per month. Yesterday at about 09.00 p.m. on 31.03.2010, I was going on my motorcycle to Narsingh Ji Enterprises Company, Pachor, after taking meals at home and when I crossed the small bridge of canal and reached near the land of Arjun son of Chittar Mal caste Ahir resident of Pachor, in the meantime Hari Om Sharma son of Sh. Mam Chand Sharma resident of Jarthal came in his car with two more persons and was driving rashly, negligently and at a very high speed and I brought my motorcycle off the road on one side and Hari Om stopped his car and came back to me, while driving his car back and started saying to me that I do not know how to drive a motorcycle and started abusing in the name of sisters and daughters. I told him that there was no balance of his car and on saying so, he brought one iron rod from his vehicle and gave a blow on the left side of my head and on seeing so Rajender Singh brother of Hari Om, who was sitting in the car and one more person got down and gave me fists and slaps. Due to this I have suffered serious injuries. Ram Swaroop son of Sh. Mangtu Ram caste Ahir resident of Pachor and Bansi son of Sukh Singh caste Ahir resident of Sampli, who were coming from the side of Sanghwari, saved me from the assailants otherwise they would have beaten me more. Legal action be taken against the accused.....”

Sandeep Kumar was medically examined at PHC Tarawari on 31.03.2010 at 11.15 p.m.

- (ii) Veer Singh, alleged eye-witness of the occurrence was not examined, rather the respondent examined one Ashok Kumar as PW-8, who was not cited as eye-witness of the occurrence in the complaint or at any point of time earlier. On perusal of complaint it appears that he is client of respondent and has also filed complaint against DSP Puran Chand, who was arrayed as accused but not summoned by trial Court.
- (iii) On the statement of respondent, DDR No. 45 dated 31.03.2010 was registered at Police Station Kasola regarding this incident, which on inquiry was found to be false and baseless and proceedings against the respondent under Section 182 Cr.P.C. were launched. In FIR No. 63 dated 09.04.2010, challan was presented against the respondent and after trial he was acquitted vide judgment dated 27.03.2015 (Annexure R-3). In *kalendra* under Section 182 Cr.P.C. filed against him for lodging false report with the police, respondent was acquitted vide judgment dated 21.02.2014 (Annexure R-4).
- (iv) Present complaint was filed by respondent on 21.08.2010 i.e. after about five months of the occurrence.
- (v) The respondent is an advocate practicing at Rewari.

5. On the day and time of alleged occurrence, an incident had taken place between respondent and one Sandeep Kumar and the matter was reported to the police in which FIR was recorded, challan was presented against the respondent. Respondent had also reported the incident as elaborated in the complaint to the police vide DDR No. 45 dated 31.03.2010, which on verification was found to be false by the police vide report dated 05.04.2010 (Annexure P-9) and proceedings against him under Section 182 Cr.P.C. were initiated by filing *kalendra* in the court on 15.03.2010. Challan in FIR No. 63 dated 09.04.2010, registered on statement of Sandeep Kumar was also presented in the Court on 16.07.2010. It was at this stage that respondent filed complaint on 21.08.2010, apparently as a counter-blast and this is further depicted from the fact that police officials of the concerned police station who have filed the challan and initiated proceedings against him under Section 182 Cr.P.C. were also arrayed as accused in the complaint. The respondent has not come up with any explanation as to why he did not file complaint till police had filed challan against him in the FIR regarding the incident registered on the statement of Sandeep Kumar and had also lodged proceedings against him for lodging false DDR regarding the incident.

6. In the compliant, respondent had cited one Veer Singh as sole eye-witness of the alleged incident which formed subject matter of his complaint but at evidence stage he did not examine Veer Singh and availed services of one Ashok Kumar and examined him as eye-witness who himself has grouse and had to settle his score with police. It is nowhere the case of respondent that Ashok Kumar had witnessed the occurrence. From

testimony of Ashok Kumar, it appears that he has also filed complaint

against DSP Puran Chand Panwar, who was arrayed as accused no. 9 in a criminal complaint in which he was complainant. He appears to have obliged the respondent, who was representing him in that case as his counsel. Learned Magistrate while passing order dated 17.01.2014 summoning some of the accused to face trial has also taken note of this fact and has rejected the version of respondent by refusing to summon accused nos. 6 to 14. Respondent is not a layman. He has an advocate by profession and is well conversant with law. This fact is not denied that during investigation of the case registered on the complaint of Sandeep Kumar, he was found guilty and the counter version put forth by him was discarded by the police. He has not come up with any plea or evidence to make out that discarding of his version by the police and launching of proceedings against him under Section 182 Cr.P.C. was motivated. The acquittal of respondent and Rajender Singh in case bearing FIR No. 63 dated 09.04.2010 was recorded by learned Magistrate because of delay in lodging the report with the police and some other factors with the observation that prosecution has failed to prove its case beyond any shadow of doubt. In the proceedings under Section 182 Cr.P.C., the prosecution had failed to examine complainant, who initiated the proceedings under Section 182 Cr.P.C. In present complaint, firstly the respondent arrayed 14 persons as accused and leveled allegations against them but learned trial Court discarded the same against persons arrayed as accused no. 6 to 14; secondly, learned trial Court took note of the fact that Ashok Kumar PW-8 examined as eye-witness was in fact not an eye-witness of occurrence; thirdly, version of respondent that he was given beating with rods, *lathis* and kicks by accused no. 6 to 8 was

respondent that he came to know of persons on motorcycle, who came to spot and caused him injuries for want of evidence as he failed to explain as to how he gathered their names; fifthly, the plea of collusion of petitioners with accused no. 9 to 14 was also rejected. This shows that respondent has come up with plea about occurrence, which were mostly discarded/rejected by learned Magistrate. All this shows that respondent has misused the process of Court. Despite being an expert in legal field and well aware that he should come to the Court with clean hand and truthful version of an occurrence, he filed the complaint with version which mostly reflect use of his expertise to falsely implicate so many persons to take revenge. The question, which arises for consideration is as to whether respondent despite being an advocate be allowed to misuse process of Court.

7. I am of the considered view that such an attempt by a person in legal profession, who daily appears before the Court and is supposed to assist in dispensation of justice, should be curbed and rejected. Keeping in view facts and circumstances of the case as discussed above, I find merit in this petition and the same is accepted. Complaint titled as "*Hari Om Sharma vs. Ram Swaroop Chauhan and others*" bearing complaint no. 737 RT/21.08.2010 and summoning order dated 17.01.2014 passed by learned Judicial Magistrate Ist Class, Rewari and all the consequential proceedings arising therefrom, qua petitioners, are quashed.

July 09, 2018
jk

(SURINDER GUPTA)
JUDGE

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

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