

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25287-2013 (O&M)
Date of decision: 29.05.2018

Ram Niwas and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Virat Amarnath, Advocate
for the petitioners.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Ashok Sharma Bhana, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR No.162 dated 26.02.2013 under Sections 309, 109, 189 of the Indian Penal Code (for short 'IPC'), registered at Police Station Jind City and all the subsequent proceedings arising therefrom.

Brief facts of the case are that the aforesaid FIR was registered on a complaint given by respondent No.2-complainant ASI Mahender Singh, with the allegations that on 26.02.2013, he was present at Mini Secretariat, Jind, when the petitioners along with many other persons, in the shape of a

mob were seen coming from the side of Court premises, raising slogans. While standing in front of the Deputy Commissioner's office, they were raising slogans like 'Parshasan murdaband' and 'hamari mange puri karo' i.e. we condemn administration and their demands be fulfilled. In the mob, he saw one persons was carrying a plastic container of white colour in his hand, containing kerosene oil and was shouting that for the murder of his mother Malo Devi, he has disclosed names of the persons in the Police Station Narwana and if accused are not arrested immediately, he will put kerosene oil on his body and would commit suicide. Even his relatives were repeatedly asking him to commit suicide. Thereafter, ASI Mahender Singh, along with his co-officials, caught hold of the said person and in the meantime, another person opened the plastic container and put some kerosene oil on the clothes of that person, who was trying to commit suicide and by taking out match stick tried to set him on fire. The complainant caught hold of that person also and took into possession the plastic container and match stick and the same were sealed in separate parcels by seal impression MS and were taken in possession of the police. The person, who was trying to commit suicide, told his name as Ram Niwas son of Tara Chand and other persons, who were abetting him to commit suicide, told their names as Krishna wife of Ramniwas, Kavita Devi wife of Ramrattan, Rakesh son of Ram Niwas and Ramrattan and thereafter, the aforesaid FIR was registered.

This petition was filed in the year 2013 and while issuing notice of motion, following order was passed by this Court on 05.08.2013: -

“Learned counsel for the petitioners has referred to the enquiry report (Annexure P-6), wherein it has been observed that Inspector Rohtash, SHO P.S. City, Narwana, did not take proper action in case FIR No.9 dated 15.01.2013, under Sections 325, 323, 34 IPC, registered at Police Station City Narwana and ASI Wazir Singh, Investigating Officer, P.S. City Narwana, has carried out shoddy investigation in case FIR No.215 dated 17.08.2012, under Sections 454, 380, 411 IPC, registered at Police Station City, Narwana. He has further contended that FIR No.22 dated 28.01.2013 (Annexure P-5) has been registered against Darshan Singh and another and the present FIR is counter blast to the said FIR.

Notice of motion for 17.12.2013.

Notice regarding stay also.

The trial Court shall adjourn the case beyond the date fixed by this Court.”

Since then, the proceedings in the trial Court are stayed.

Reply of Deputy Superintendent of Police, City Jind, District Jind was filed on 04.02.2014.

Learned senior counsel for the petitioners has argued that petitioner No.1 is Head Teacher in a Govt. School and is an educated person and belongs to Scheduled Caste category and is a victim of the circumstances, which has resulted into his false prosecution along with his

wife, sons and daughter-in-law. It is further argued that in fact the dispute arose with regard to a small plot measuring 06 marla, on which petitioner No.1 has raised construction of his house by his hard-earned money and one person Darshan Singh and his son Bhupender Singh, who are native of his village, have raised a dispute regarding the said plot on the basis of revenue record, claiming themselves to be co-owner of the property. On the complaint of aforesaid Darshan Singh, Sub Divisional Magistrate, Narwana had initiated the proceedings under Section 145 Cr.P.C. and decided the entire proceedings within a period of 06 days.

It is submitted that a perusal of the order dated 11.04.2011 (Annexure P-2) shows that the police calendra under Section 145 Cr.P.C. was submitted by the SHO, Police Station City Narwna against petitioner No.1 Ram Niwas and Darshan Singh with the allegations that Darshan Singh is claiming ownership on the basis of jamabandi that he is a co-sharer in khata No.259/376, 377 to the extent of 10 marlas and on the other hand, petitioner Ram Niwas has claimed ownership of 06 marlas vide registered deed No.5681 dated 30.03.2007 and there was an apprehension of breach of peace. The SDM, Narwana, by invoking the provisions of Section 145 Cr.P.C., appointed Tehsildar, Narwana as receiver under Section 146 Cr.P.C. In revision, the Additional Sessions Judge, Jind, vide order dated 05.03.2012, however, set aside the order and remanded the case back to the SDM to decide the same in accordance with law, after providing opportunity to the parties to lead evidence.

Learned senior counsel for the petitioners has submitted that on the complaint given by petitioner No.1 Ram Niwas, FIR No.9 dated 15.01.2013 under Sections 325, 323, 34 IPC, was registered at Police Station City Narwana, against Darshan Singh but no action had been taken in this FIR. In the meantime, aforesaid Darshan Singh got an FIR No.215 dated 17.08.2012 under Sections 454, 380, 411 IPC, registered against petitioner No.2, who is wife of petitioner No.1, with the allegations that petitioner No.2 has stolen a sugar bag weighing 50 kg. Petitioner No.2 was granted anticipatory bail by this Court vide order dated 16.11.2012 (Annexure P-4). Thereafter, on 28.01.2013, petitioner No.1 got registered an FIR No.22 dated 28.01.2013 under Sections 302, 324, 148, 149, 452 IPC and Section 3 of SC/ST Act at Police Station City Narwana (Annexure P-5). The allegations in this FIR were that accused Darshan Singh and his son Bhupender Singh have committed the murder of mother of the petitioner No.1, namely Smt. Malo Devi.

It is further submitted by learned senior counsel for the petitioners that in the intervening period, even the police submitted a report under Sections 107/150 Cr.P.C., on the complaint given by petitioner No.1 that he has been given beatings by Darshan Singh and he had even tried to kill him with the help of a vehicle. These complaints were enquired into by the police of Police Station City Narwana and later on, the same entrusted to the Superintendent of Police, Hisar, as petitioner No.1 represented to the higher police officials that police of Police Station City Narwana is openly

favouring opposite party. Vide a detailed inquiry report dated 29.01.2013 (Annexure P-6), Superintendent of Police, Hisar concluded in the enquiry, which is as under: -

“Conclusion:

From the above facts of enquiry, I have come to the conclusion that the then Insp. Rohtash, SHO PS City, Narwana did not take the desired action in case FIR No.9 dated 15.01.13 u/s 325/323/34 IPC PS City Narwana and in complaint submitted by Ram Niwas on 31.10.12, ASI Wazir Singh, Investigating Officer, PS City Narwana has carried out shoddy investigation of case FIR No.215 dated 17.08.12 u/s 454/380/411 IPC PS City, Narwana. The complaint submitted by Ram Niwas on 31.10.12 has been entrusted to ASI Ram Pal but he did not conduct the enquiry of complaint properly and did not take the desired action. Complainant Ram Niwas was admitted in Civil Hospital Narwana due to injuries given by Darshan Singh and Bhupinder Singh, but ASI Jai Parkash PC City Narwana did not register the case in time and registered after delay of 12 days and did not arrest the accused up to 28.01.2013. The delinquency's of all policemen should be treated departmentally.

Sd/-

*B. Satheesh Balan, IPS
Superintendent of Police,
Hisar.”*

Learned senior counsel for the petitioners has further submitted that incident relating to murder of mother of petitioner No.1 was also highlighted in the media, however, police did not take any action and failed to arrest the accused persons. Therefore, petitioner No.1 along with his family members, friends and relatives, had gone to meet the Deputy Commissioner, Jind and to submit a representation for issuing directions to the police authorities to take action against the accused persons in aforesaid FIR No.22 and when they were not allowed by the officials to meet the DC, Jind, they raised slogans outside DC office and have been falsely implicated in the impugned FIR No.162, though there was no such occasion for a person like petitioner No.1, who is Head Teacher in a Govt. School to make an attempt to commit suicide as he had already lost his mother.

Learned senior counsel for the petitioners has further submitted that action on the part of respondent No.2, who is also posted in the same city Jind and as per enquiry report of the Superintendent of Police, Hisar, a finding was recorded that other ASIs have carried out a shoddy investigation holding that in aforesaid FIR No.215 and the complaint of petitioner No.1 was also not conducted properly by ASI Ram Pal, therefore, the impugned FIR has been registered by respondent No.2 ASI Mahender Singh in a malafide manner, just to put pressure on the petitioners, as the co-officials of respondent No.2 have been implicated in the enquiry (Annexure P-6) and the petitioners have not committed any offence.

Learned senior counsel for the petitioners has further argued

that wife of petitioner No.1 Smt. Krishna Devi, who was arrayed as an accused in FIR No.215 with the allegations of committing theft of a sugar bag, faced full length trial and was acquitted by the Sub Divisional Judicial Magistrate, Narwana vide judgment dated 06.11.2013 (Annexure P-9). It is further submitted that even a criminal complaint filed by aforesaid Darshan Singh against petitioner No.1 under Sections 406, 420, 504, 506 IPC before the SDM, Narwana with the allegations that petitioner No.1 in pursuance to an agreement to sell with the complainant Darshan Singh, has failed to get the sale deed executed, despite having receiving the entire sale consideration, was also dismissed vide order dated 07.02.2014 (Annexure P-10). It is also submitted by learned senior counsel that the accused persons Darshan Singh, his son Bhupender Singh and eight other persons were later on arrested in FIR No.22.

Learned senior counsel for the petitioners has relied upon a judgment of the Hon'ble Supreme Court in **Harshendra Kumar D. Vs. Rebatilata Koley etc., 2011 (2) Civil Court Cases 230 (SC)** to submit that the Court, while exercising powers under Section 482 Cr.P.C., can look into the uncontroverted documents placed on record by the accused, which on the face of it are beyond any suspicion or doubt. Learned senior counsel has further relied upon **State of Haryana and others Vs. Bhajan Lal and others, 1992 Supp (1) Supreme Court Cases 335**, where it has been held by the Hon'ble Supreme Court that if the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused or where the criminal proceeding is manifestly attended with malafide or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the High Court can quash the FIR under Section 482 Cr.P.C.

Learned senior counsel for the petitioners has referred to the affidavit of DSP, Narwana to submit that the facts regarding registration of FIR No.22 with regard to murder of mother of petitioner No.1 at the hands of family of Darshan Singh is admitted and the accused persons were arrested on 29.01.2013 and thereafter, challan against them was presented. It is further submitted that in the affidavit, enquiry report of the Superintendent of Police, Hisar (Annexure P-6) stands admitted and regular departmental enquiry has already been ordered against ASI Ram Pal of Police Station City Narwana.

Learned senior counsel for the petitioners has further argued that though it is stated in this affidavit that challan has already been presented against the accused persons in impugned FIR No.162, but the affidavit is silent about the evidence, which has come on record against the petitioners during the investigation and therefore, in the absence of any specific denial, the averments made in the present petition praying for quashing of FIR, are not specifically rebutted.

Learned State counsel has however opposed the prayer for

quashing of the impugned FIR on the ground that since challan has already been presented before the trial Court, the petitioners have remedy of raising pleas/defence at the time of framing of charge and the same can be availed by them during the course of the trial.

Learned counsel for respondent No.2 has submitted that the police has conducted the enquiry in a fair and impartial manner and has denied the allegations levelled in the present petition.

Learned counsel for respondent No.2 has however not filed any reply and has rebutted the arguments advanced by learned senior counsel for the petitioners that the impugned FIR has been registered on the basis of correct facts and prays for dismissal of the present petition.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

(i) Admittedly, both the parties have set up a case that the bone of contention between the petitioners and Darshan Singh is subject matter of dispute in a civil proceeding. The order dated 11.04.2011 passed by SDM, Narwana, invoking the provisions of Section 145 Cr.P.C., on a complaint of Darshan Singh, was set aside by the revisional Court vide order dated 05.03.2012, which shows that the dispute is regarding the joint property, in which Darshan Singh claimed his share to the extent of 10 marlas and petitioner No.1 Ram Niwas claimed 06 marlas of his share and further claimed that he has constructed a small house and has also installed an electricity connection. Later on, Darshan Singh got an FIR No.215 registered

against wife of petitioner No.1 Smt. Krishna Devi for committing theft of a sugar bag of 50 kg, in which she was acquitted by the trial Court vide judgment dated 06.11.2013 (Annexure P-9). Petitioner No.1 even got an FIR No.9 registered against Darshan Singh and his son Bhupender Singh for physically assaulting him. Later on, Darshan Singh and others were booked in FIR No.22 for allegedly committing murder of mother of petitioner No.1 Smt. Malo Devi. The petitioner No.1 was also taking recourse to his legal rights by representing to higher police officials against false implication of his family members and the matter was got enquired by SP, Hisar, an officer outside District Jind, who, as per his enquiry report, had held ASI Ram Pal and ASI Mahender Singh guilty and further proposed for taking departmental action against them and therefore, the possibility that complainant-respondent No.2 ASI Mahender Singh, who was also posted in Jind, being colleague of aforesaid 02 ASIs, has implicated the petitioners in the impugned FIR with a malafide intention.

(ii) A perusal of the impugned FIR further shows that petitioner No.1 and his family members were protesting outside office of DC, Jind against inaction of the police officials of Police Station City Narwana for not arresting Darshan Singh and others and it does not appeal to logic that petitioner No.1, who is an educated man and serving as Head Teacher in a Govt. School, would commit suicide to demonstrate protest that murderers of his mother were not arrested especially in view of the fact that FIR is registered by respondent No.2, who himself is an ASI, posted in the same

District.

(iii) In view of the admitted position, in the affidavit of DSP, City Jind; undisputed enquiry report of SP, Hisar, vide which departmental proceedings have been initiated against aforesaid erring two ASIs; involvement of petitioner No.2 in a petty theft case of a sugar bag, in which she was acquitted; registration of an FIR against Darshan Singh and others under Sections 325, 323, 34 IPC for causing hurt to petitioner No.1 and dismissal of criminal complaint filed by Darshan Singh against petitioner No.1 for committing cheating on account of an agreement to sell vide judgment dated 07.02.2014 (Annexure P-10); the vindictive attitude of Darshan Singh and others against the family of petitioner No.1, who belongs to SC category is apparent on record.

(iv) From the documents relied upon by the petitioners, which are judgments of the Courts, passed in other FIRs/complaints and the undisputed enquiry report conducted by the SP, Hisar, inducting two police officials of Police Station City Narwana, also show that Darshan Singh and others were not only using their muscle power but were also in a dominating position to influence the investigation conducted by the police of Police Station City Narwana against the petitioner, an SC and a Head Teacher in a Govt. School, for constructing his house over 06 marlas of land.

(v) In view of the judgments of the Hon'ble Supreme Court in **Harshendra Kumar D.'** case (supra), while relying upon the undisputed documents i.e. judgments passed by the Courts below in the other

proceedings in FIRs/complaints as well as the undisputed report of SP, Hisar, I have no hesitation to hold that the criminal proceedings against the petitioners at the hands of respondent No.2 is a malafide action. However, he has not even filed any reply to counter the allegations made in the present petition, which is pending since 2013.

(vi) In view of the judgment of the Hon'ble Supreme Court in **Bhajan Lal's** case (supra), wherein it has been held that where the proceedings in pursuance to a criminal complaint/FIR is nothing but misuse of process of law, the FIR/complaint can be quashed, this petition is allowed and FIR No.162 dated 26.02.2013 under Sections 309, 109, 189 IPC, registered at Police Station Jind City and all the subsequent proceedings arising therefrom are ordered to be quashed qua the petitioners.

[ARVIND SINGH SANGWAN]
JUDGE

29.05.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No