

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-23723 of 2014
Date of decision: 06.09.2018

Devinder Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.K. Garg Narwana, Senior Advocate
with Mr. Naveen Gupta, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

None for respondent no. 2.

SURINDER GUPTA, J.

The petitioner has filed this petition under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of Criminal Complaint No. 79 dated 04.05.2009 (Annexure P-2) pending in Court of Judicial Magistrate, Ist Class, Rohtak and summoning order dated 03.05.2014 (Annexure P-6) along with all consequential proceedings arising therefrom.

2. On the statement of complainant-Dharambir (respondent no. 2), FIR No. 56 dated 23.02.2007 for offences punishable under Sections 323, 325 read with Section 34 of Indian Penal Code (for short 'IPC') was registered at Police Station Kalanaur, District Rohtak against accused, namely, Mahender, Vikas, Rajesh, Guddi, Mukesh, Yogesh and petitioner-Devinder Singh. The police presented final report under Section 173 Cr.P.C. wherein petitioner-Devinder Singh alongwith Mukesh and Yogesh were not charge-sheeted and kept in column no. 2 of the challan while remaining four persons were challaned.

3. FIR was registered on the statement of complainant-Dharambir, wherein he has stated that on 28.01.2007, he was present in village at his home, when his nephew Ashish son of Pritam Singh came and told him that he was standing in front of their plot at about 11.00 a.m., when Vikas son of Mahender resident of village Kakrana abused him and objected to his standing there. He told him that it was their plot and they should have no objection to his standing there. Meanwhile, Vikas son of Mahender came at the spot and complainant asked him reason for abusing and beating his nephew Ashish. At this Vikas caught complainant from his shirt and started giving fist and kick blow. He put complainant down on the earth. Complainant raised noise '*Maar Diya Maar Diya*', which attracted his brother Vikram to the spot, who tried to rescue him. At that time, Mahender son of Dharampal caste Harijan village Kakrana came there having *lathi* in his hand and hit at the left hand of Vikram. Thereafter Yogesh son of Mahender also came there and hit Vikram on his right eye. Bijender, brother of complainant, on hearing *raula*, came there, who was also attacked by Rajesh son of Om Parkash. He (Rajesh) caused injury on left hand of Bijender with *jelli*. Devinder Singh son of Ramdhari (petitioner) also came there and gave a brick blow on his left hip. Elder brother of complainant, namely, Bhim Singh also reached the spot and Rajesh son of Om Parkash threw brick hitting his head. Guddi wife of Suresh Kumar caste Harijan who was having bricks in her hand, hit the same on head of his brother Bhim Singh. When they raised noise '*Maar Diya Maar Diya*', Ram Niwas son of Net Ram caste Brahmin and Hari son of Mewa Ram caste Brahmin, resident of Kakrana came at the spot and rescued them.

4. On investigation, police found petitioner-Devinder Singh and his co-accused, namely, Mukesh and Yogesh as innocent and filed final

report dated 27.03.2007. Perhaps it was presented or registered in Court as criminal case on 30.03.2007.

5. After filing of final report, respondent no. 2 filed a complaint on 04.05.2009 (Annexure P-2) against aforesaid seven persons and two more persons, namely, Rakesh and Vikas, levelling allegations similar to those as mentioned in the FIR.

6. The Court took cognizance of challan and finally disposed of the same on 15.03.2014 and thereafter, vide order dated 03.05.2014 summoned accused, Mukesh, Yogesh, Om Parkash, Rakesh and petitioner-Devinder Singh to face trial for offences punishable under Sections 323, 325, 506 read with Section 34 IPC.

7. The first question, which arises for consideration, is as to whether the Court after taking cognizance of the offence can again take the cognizance on a complaint? In this case after filing of challan on 27.03.2007/30.03.2007, the Court had taken cognizance of the offence and proceeded further with the challan. The complaint was filed on 04.05.2009, regarding the same occurrence and again the Court took cognizance and did not club the complaint with the challan filed by the police. In case **Dharam Pal and others vs. State of Haryana and another, 2014 (3) SCC 306**, Constitution Bench of Hon'ble Apex Court has observed that cognizance of the offence can only be taken once. Though, in that case Magistrate had taken the cognizance after committing the case to Sessions Court but applying the same principle to facts of the case, it can be safely held that after taking the cognizance of the offence on presentation of police report, the trial Court could not proceed separately against the accused for the same offence.

Section 210 (2) Cr.P.C. provides that "if a report is made by the investigating police officer under section 173 and on such report cognizance of any

offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report”.

8. Section 210 (3) Cr.P.C. provides that “if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code”.

9. It is evident from above provisions that Magistrate can proceed with the complaint if the police report does not relate to a particular accused in complaint case or if the Magistrate has not taken cognizance of any offence on police report.

10. In this case, learned Magistrate had taken cognizance of the offence on police report and had ample powers to summon the accused kept in column no. 2 of the charge-sheet without holding further inquiry as per provisions of Sections 190, 200 and 202 Cr.P.C. Section 319 Cr.P.C. further empowers the trial Court to summon any person to face trial as additional accused, if it is satisfied that such person has committed any offence for which he can be tried.

11. In this case, trial Court neither proceeded under Sections 190, 200 and 202 Cr.P.C. nor found any material during trial on police challan to summon the accused kept in column no. 2 as per provisions of Section 319 Cr.P.C. and the trial ended in convicting three accused and acquittal of one accused. It was after judgment dated 15.03.2014 (Annexure P-4) passed by the trial Court that impugned order dated 03.05.2014 was passed summoning

some more accused to face trial for offences punishable under Sections 323,

325, 506, 34 IPC. It is evident from the judgment of conviction passed by learned Magistrate, Rohtak that accused in that case had also faced trial for offences punishable under Sections 323 and 325 IPC. The order of summoning the petitioner is virtually an order to summon him to face trial as additional accused after the conclusion of trial in main case and has virtually resulted in defeating the specific provisions as contained under Section 319 Cr.P.C. and has resulted in misuse of process of law. The incident took place in the year 2007. After reporting the matter to police, final report was filed. The petitioner was found innocent and this fact was within the knowledge of complainant. Instead of approaching the trial Court for summoning the petitioner as additional accused, complainant (respondent no. 2) opted for another method of filing complaint against petitioner and other accused levelling almost similar allegations as were levelled in FIR. The above process adopted by respondent no. 2 is a clear case of abuse of process of court and I find reasons to invoke power of this Court under Section 482 Cr.P.C. to prevent the abuse of process of court and to secure the ends of justice by quashing the complaint and summoning order qua the petitioner.

12. For the reasons as discussed above, the instant petition is allowed and Criminal Complaint No. 79 dated 04.05.2009 (Annexure P-2) pending in Court of Judicial Magistrate, Ist Class, Rohtak and summoning order dated 03.05.2014 (Annexure P-6) along with all consequential proceedings arising therefrom, qua petitioner, are quashed.

September 06, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No