

202.

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

CRM-M-24059-2014

Date of decision:06.12.2018.

SUNIL KUMAR & ORS

... Petitioners

Versus

STATE OF HARYANA & ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sushil Sheoran, Advocate,
for the petitioners.

Mr. Manish Bansal, DAG, Haryana,
for respondent No.1.

Mr. Aayush Gupta, Advocate,
for respondent No.2.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the Complaint No.380-I, dated 22.08.2013 (Annexure P-4), titled as "Hira Singh Versus Sunil Kumar and others" filed by respondent No.2-Hira Singh. Challenge has also been laid to the order dated 13.05.2014 (Annexure P-5) whereby petitioners along with two others, have been summoned to face trial.

Briefly stated, respondent No.2-Hira Singh had filed a complaint under Sections 148, 149, 323, 324, 325, 326, 307, 506 of IPC at Police Station Sadar Charkhi Dadri against the petitioners with the allegations that on 17.06.2006, Anil, who is the son of the complainant, was sowing seeds with the tractor in the field near Parithiwala Pond.

complainant, after giving the seeds, was coming back to his house and at about 9.00 AM, when he reached the backside of Mittal Petrol Pump, accused Dharampal, who is real brother of the complainant, his sons, namely, Sandeep and Manjeet were standing there and stated that they will teach the complainant a lesson for getting the stay. On saying this, Dharampal, who was having a rapri in his hand, gave two blows on the right and left side of head of the complainant. Whereas Sandeep, who was having a rod in his hand, gave blow on both legs of the complaint. Accused Sunil who was having kulhari, gave blow to the complainant which hit above his both the eyes. The accused Manjeet, who was having iron rod in his hand, gave a blow on the right hand of the complainant. Then the other accused Dhanraj, Vijay, Partap Singh, Surender, Narender, Jaibir, Ramotar, Raja and Mani Ram also came there. Dhan Raj, who had a rod in his hand, gave a blow on the nose and mouth of the complainant. Similarly, Vijay was having danda in his hand and gave a blow on the back of the complainant. Partap Singh, who was having a lathi in his hand, gave a blow on the back and right hand of the complainant and the remaining accused i.e. Surender, Narender sons of Jaibir, Jaibir son of Mange Ram, Ramotar son of Matu Ram, Raja son of Shishpal and Mani Ram son of Jugta, gave fist and kick blows to the complainant. Hearing the cries of the complainant, his son Anil, who was sowing seeds, came there with tractor and rescued the complainant from the clutches of the accused. Before fleeing away on the tractor along with their respective weapons, the accused threatened the complainant that today he has been saved, but on finding a chance, they will not leave him (complainant) alive.

The complaint was though filed on 23.10.2007 but after a period of about 6 years, the same was withdrawn by the complainant on 25.05.2013. The relevant order dated 25.05.2013 reads as under:-

“Today the case is fixed for arguments, at this stage, plaintiff has made a statement that he does not want to proceed with the instant complaint and wants to withdraw the same. In view of the statement made by the plaintiff, the present complaint is hereby dismissed as withdrawn. File be consigned to record room after due compliance.”

Interestingly, for the same set of allegations, an FIR No.173 dated 22.06.2006 under Sections 323, 325, 34 IPC, Police Station Sadar, Dadri, was also registered against all the accused. However, after conducting investigation, the police challaned only three persons, namely, Dharampal son of Moti Ram and Sandeep and Manjeet sons of Dharampal.

Learned Judicial Magistrate Ist Class, Charkhi Dadri, vide his order dated 05.03.2012, acquitted the accused challaned in the FIR, as the prosecution had failed to prove its case against the accused persons beyond reasonable doubt. The relevant paragraph reads as under:-

“10. It is relevant to mention that the complaint submitted by the complainant in this case as Ex.PW1/A and the said complaint has been submitted by the complainant himself. As per the said complaint, which document has been signed by the complainant, the name of Partap Singh, Narender, Surender, Jaibir, Ramavtar, Raja and Mani Ram have been not mentioned to be accused in the manner alleged in this case. The said persons have been named as accused in the testimony of the complainant. The said persons were actually found innocent by the police during investigation. It is further pertinent to mention that as per the complaint Ex.PW1/A, one Dhan Raj and one

Vijay are alleged to have arrive at the spot of occurrence much after the accused Dharampal, Sandeep and Manjeet and Dhan Raj are alleged to have started beating up the complainant, whereas, as per the testimony of the complainant as PW1, all of them were present on the spot together, right from the beginning of the alleged incident. This contradiction between the complaint submitted by the complainant and his testimony as PW1 refers to said doubt regarding the very occurrence of the incident as alleged by the prosecution. None of the other witnesses of the prosecution had any incriminating fact to depose against any of the accused persons.

11. As a percolation of the above discussion, it is concluded that the prosecution has failed to prove its case against the accused persons beyond reasonable doubt. Hence all the accused stand acquitted in the case. Bail bonds stand extended under Section 437-A of the Cr.P.C. File be consigned to record after due compliance.”

It is thereafter when the complaint was dismissed as withdrawn on 25.05.2013 and the accused Dharampal and his sons Sandeep and Manjeet were acquitted by the trial Court on 05.03.2012, the complainant filed a fresh complaint on 22.08.2013 reiterating the same incident with an added paragraph that on 15.08.2013 at 8.00 PM, the accused in connivance with each other and with common object, gave threats that the appeal which has been filed before the learned Sessions Judge, Bhiwani against the judgment of acquittal, be withdrawn immediately, failing which, the complainant will have to face dire consequences. In the said complaint, the trial Court vide order dated 13.05.2014 summoned the accused to face trial for offence under Sections 148, 149, 323, 324, 325, 326, 307, 452 and 506 of IPC.

It is the aforesaid complaint and summoning order which is the subject matter of challenge before this Court.

Learned counsel for the petitioners has argued that for the same set of allegations, the petitioners are suffering consistently since long. The complainant initially filed a complaint against the petitioners which was dismissed as withdrawn on 25.05.2013 after a period of about 6 years. For the same set of allegations, an FIR was also registered and though all the petitioners were named as accused, but the police after conducting investigation challaned only three persons, namely, Dharampal and his sons Sandeep and Manjeet. Filing of the present complaint and the summoning thereof is nothing but a sheer abuse of process of law. The complainant has no faith in the judicial system and is filing frivolous complaints one after the other, despite the fact that the earlier complaint was dismissed as withdrawn and in the FIR case, they were acquitted by the trial Court.

On the other hand, learned counsel for the respondent-complainant has argued that it is because of the threats, the complainant had filed a fresh complaint. The complainant was given fresh threat on 15.08.2013, which gives him a fresh cause of action. As regards the argument that the earlier withdrawal of the complaint is not a bar to the second complaint, he refers to a judgment of Hon'ble Apex Court in ***Jatinder Singh Versus Ranjit Kaur-2001 AIR (SC) 784*** and has argued that in case first complaint has been dismissed in default, second complaint on the same facts filed before the same Magistrate shortly thereafter, is not a bar.

I have heard learned counsel for the parties.

The perusal of the record reveals that the initial complaint filed by the respondent-complainant spells out the same incident as referred in the subsequent complaint. In the earlier complaint after a long marathon of 6 years, the complainant withdrew the said complaint. Incidentally, the said complaint was at an advanced stage, as all the witnesses had been examined and the case was fixed for arguments. It is at the stage of arguments, the counsel for the complainant made a statement that the complainant does not want to proceed with the complaint and wishes to withdraw the same. Accordingly, the complaint was dismissed as withdrawn. Even otherwise, learned Magistrate had tried the FIR case separately and acquitted the petitioners-accused, for the reason that the prosecution had failed to prove its case against the accused persons beyond reasonable doubt.

The allegation that fresh threats were extended to the complainant by the petitioners is nothing but a concocted version. The complainant is not ready to accept the judgments passed by the court and intends to keep the litigation alive on one pretext or the other. The petitioners are suffering at the hands of the complainant continuously for the last about 11 years.

The judgment referred by the learned counsel for the respondent-complainant has no application to the facts and circumstances of present case as in that case i.e. ***Jatinder Singh (supra)***, the complaint was dismissed in default and the second complaint was filed shortly thereafter, whereas in the case in hand, not only the complaint filed by the respondent-complainant was withdrawn by him, rather the second complaint has been filed after a period of about 6 years (as the first complaint was filed in the year 2007 and the second complaint in the year 2013). A mere assertion that

there were fresh threats in the year 2013, is nothing but a glaring attempt to bring out the complaint on the ground of fresh cause of action. This Court deprecates the same.

Accordingly, the present petition is hereby allowed and the Complaint No.380-I, dated 22.08.2013 (Annexure P-4) filed by the respondent-complaint is set aside. Consequently, the summoning order dated 13.05.2014 (Annexure P-5) is also set aside.

Considering the aforesaid conduct, costs of Rs.10,000/- is imposed upon respondent No.2-complainant which shall be deposited by him with the Haryana Legal Services Authority within one month from today.

(HARI PAL VERMA)
JUDGE

06.12.2018
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.