

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

**CRM-M-30102-2018
Date of decision:19.07.2018**

Pawandeep Singh @ Pawan and others

.....Petitioners

Versus

Guriqbal Singh @ Lucky and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Bhriagu Dutt Sharma, Advocate
for the petitioners.

GURVINDER SINGH GILL, J. (ORAL)

The petitioners seek quashing of criminal complaint No.COMI 227 of 2015 (Annexure P-1) and summoning order dated 15.05.2018 (Annexure P-2) whereby the petitioners have been summoned to face trial in the said complaint under Sections 323, 324, 506, 148 and 149 of the Indian Penal Code, 1860 and all the other consequential proceedings taken therein.

The allegations, in nut-shell, as per the complaint instituted at the instance of Guriqbal Singh alias Lucky are that on 02.02.2014 when

he was present in his house along with his wife and his cousin Manmeet Singh alias Vicky, the accused entered into his house and that while accused Pawandeep Singh alias Pawan, Ujjal Singh and Jatinder Singh alias Garry were armed with '*Datar*', Lakhwinder Singh alias Lucky was armed with Kirpan and Harvinder Pal Singh alias Sodhi was armed with baseball bat and Gurbinder Kaur alias Pinki was empty handed. It is alleged that Ujjal Singh raised '*Lalkara*' exhorting his companions not to spare the complainant, upon which Pawandeep Singh gave a blow with '*Datar*' hitting him on the left shoulder. Ujjal Singh gave a blow with '*Datar*' hitting right shoulder of the complainant. It is alleged that Jatinder Singh alias Garry gave a blow with '*Datar*' hitting the complainant on his back and Lakhwinder Singh alias Lucky gave a blow of Kirpan to the complainant and when the complainant tried to ward off the same with his left hand, it hit him on his left hand. It is further alleged that Harvinder Pal Singh alias Sodhi hit the abdomen of the complainant with the baseball bat. The entire occurrence is stated to have been witnessed by Manpreet Kaur, wife of the complainant and by Manmeet Singh cousin of the complainant, who were also present at the spot.

The complainant in order to substantiate his case, himself stepped into the witness box in preliminary evidence and also examined Dr. Kamal Paul as CW-1, his cousin Manmeet Singh alias Vicky as CW-2, Dharminder Singh as CW-3 and Dr. Aman Bansal Associate Professor Orthopedics as CW-4.

Learned trial Court reached at a conclusion that there were sufficient grounds to proceed against the accused and accordingly

summoned all the accused except Gulpinder Kaur alias Pinki to face trial in respect of offence punishable under Sections 323, 324, 506, 148 and 149 of the Indian Penal Code, 1860, vide order dated 15.5.2018.

Learned counsel for the petitioners while assailing the impugned order dated 15.05.2018 has submitted that in fact there has been lot of litigation amongst the parties both civil as well as criminal and that the present complaint has been falsely lodged against the petitioners. It has been submitted that initially a complaint had been submitted by the complainant to the police, which was enquired into at length by the police and it was found that no offence had been committed and cancellation report had in fact been filed by the police.

It has further been submitted that during the course of investigation, the police had obtained comments from the Doctor who had examined the complainant and as per report of the Doctor concerned i.e. Dr. Kamal Paul, which is duly referred to in the cancellation report, the injuries were found to be self-suffered. Learned counsel in this regard has referred to the cancellation report (Annexure P-4) wherein the Doctor in response to certain queries had opined that the injuries are self-inflicted or can be caused with the friendly hand. He has gone to the extent of stating that such types of the injuries cannot be caused by weapon allegedly used in the occurrence. He has further opined that in case of fracture of 5th Metacarpal, there should have been injuries on the remaining part of the hand as well.

Learned counsel for the petitioners has further submitted that in fact during the course of investigation it had been found that one of the

accused was away to Shimla at the time of occurrence while other two were also not present at the spot of occurrence and were stationed at a distant place. It has further been submitted that present complaint is counter-blast to the criminal case, in which, the complainant and others were convicted. It has also been submitted that the trial Court has passed the summoning order in a mechanical manner without looking into cancellation report.

I have heard learned counsel for the petitioners and perused the impugned order. I find that the summoning order passed by the learned trial Court is based on evidence led by the complainant which includes statements of two Doctors. Though I do find that in the cancellation report divergent opinion has been expressed by one of the Doctors and even the presence of accused at the spot is stated to be falsified as one of the accused is stated to be in Shimla, but in view of the categorical statements of the complainant and witnesses, it would be a matter of defence evidence as to whether the plea of “alibi” can really be accepted. A plea of 'alibi' is one such plea which can be established by accused by leading cogent and convincing evidence so as to absolutely rule out his presence at the spot in such a manner that it could not have been possible for him to be physically present at the spot. Such plea can only be accepted on the basis of evidence led in Court, duly tested by cross-examination. Further, the fact that one of the Doctor has given a divergent opinion can also be tested during the course of trial only and it would be pre-mature to hold that the entire complaint is false at this stage.

Hon'ble the Supreme Court in State of Haryana Vs. Bhajan

Lal, 1992 Supp (1) SCC 335 enumerated the categories of cases where inherent powers under Section 482 Cr.P.C. could be exercised for quashing FIR as follows:

- “(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where 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.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act

(under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

- (7) Where a criminal proceeding is manifestly attended with mala fide and/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.”

It was further held therein as follows:

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

In another recent case Dineshbhai Chandubhai Patel Vs. State of Gujarat, (2018) 3 SCC 104 the Hon'ble Supreme Court held as follows:

“29. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate court. The question, in our opinion, was required to be examined keeping in view

the contents of the FIR and prima facie material, if any, requiring no proof.

30.

31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.”

In view of the aforesaid discussion, and in light of ratio of above referred judgments this Court does not find any merit to quash criminal complaint No.COMI 227 of 2015 (Annexure P-1) and summoning order dated 15.05.2018 (Annexure P-2) at this stage and the petition is dismissed. However, the petitioners would be at liberty to raise all the abovesaid pleas before the learned trial Court at the appropriate stage.

It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

(GURVINDER SINGH GILL)
JUDGE

19.07.2018
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No