

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

**CRM-M-33695-2017
Date of decision: 30.10.2018**

Sher Mohammad

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. H. S. Randhawa, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Rajesh Lamba, Advocate
for respondent No. 2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 03.08.2017 (Annexure P-3), passed by the revisional Court, vide which, the summoning order dated 25.10.2016, passed by the trial, was partly set aside and complaint qua respondent No. 2 Mohammad Iliyas was dismissed.

It is worth noticing that the co-accused of respondent No. 2, namely Phool Kumar, who had faced full length trial before the Sub Divisional Judicial Magistrate, Hathin, stands acquitted, vide judgment dated 03.08.2018. The operative part of the said judgment reads as under:

“7. I have heard the learned counsels for the parties and with their help, the record of the case has also been perused very carefully.

8. In the present case accused has been charge-sheeted for the offence under Sections 323, 325, 506 of The Indian Penal Code, 1860. Before proceeding further it would be apt to reproduce the essential ingredients of Sections 323, 325, 506 of The Indian Penal Code, 1860, which are as under:-

The essential ingredients of Section 323 of IPC are as

under:- (1) Accused actually caused bodily pain, disease or infirmity. (2) Accused did so with intention of causing hurt or with knowledge that hurt was likely to be caused. The essential ingredients of Section 325 of IPC are as under:- (1) Accused caused hurt. (2) Hurt was grievous as provided in Section 320, I.P.C. (3) Hurt was caused voluntarily. The essential ingredients of Section 506 of IPC are as under:- (1) Accused threatened complainant, his person, property or reputation or the person or reputation of any one in whom he is interest. (2) Such threat was with some injury. (3) Threat was with intent to (1) cause alarm to complainant. (2) to cause complainant to do any act which he was not legally bound to do, (3) to cause to omit to do any act which he was legally entitled to do. (4) Threat given was (1) to cause death, (2) to cause grievous hurt, (3) to cause destruction of any property, (4) to cause an offence punishable with death, imprisonment for life, imprisonment for a term which may extend to 7 years or to impute unchastity to a woman. (5) Accused intended complainant so threatened or alarmed to do any act which he was not legally bound to do or to omit to do any act which the complainant was legally entitled to do as the means of avoiding the execution of such threat.

9. Case of the complainant is that on 06.09.2013 his daughter Barfina was teased and tried to be kidnapped by Mubarik, Anish, Habbi and Lukman and against these persons on the order of S.P. Palwal case FIR No.323 of 2013, under Sections 323, 354, 506 of IPC and POCSO Act, 2012 has been registered. For the purpose of taking action in this FIR they met to S.P. Palwal on 24.09.2013 and S.P. Palwal directed them to met DSP Phool Kumar. On the next day dated 25.09.2013 he and his son reached to DSP Phool Kumar, at about 9:00 AM. As soon as they met him, DSP started abusing them and said they he will teach them lesson for making complaint and started beating with lathi, danda, legs and fist blow, due to which he got fracture and also received injuries on the other parts of body. His son tried to rescue him but DSP has also slapped him. DSP also looted their two mobile phones and Rs.10,000/- from his pocket and Rs.497/- from the pocket of his son. Thereafter, DSP called SHO Iliyas, Chowki Incharge and persons of other party. SHO Mohammad Iliyas had given slaps and they threatened that if they do any proceeding regarding this, then they will kill them and implicate them in a false case and started putting pressure for compromise with the other party and obtained his

signatures on blank papers. When they refused to enter into a compromise, then they registered a false case No.357/2013, under Section 323, 452, 506 of IPC and arrested them. On 30.09.2013 they had been released on bail. On the next day he went to Government Hospital, Hathin for his medical examination but doctor refused for his examination. On 10.03.2013 on the order of Court his medical examination has taken place.

10. In the present complaint, it has been mentioned that it is DSP, SHO Hathin who had threatened them not to take any action otherwise they will kill them and implicate in false case. When CW1 appeared in witness box, then he deposed that it is Mohammad Iliyas who on coming started hitting him with slaps blow and said that if any action has been taken, then they will kill them and will implicate in false case. CW3 Sabir alleged eye witness/injured deposed that it is Mohammad Iliyas who said that if any action has been taken, then they will kill them. In the present case at this time there is only accused Phool Kumar not Mohammad Iliyas, so the present case is to be seen with respect to accused DSP Phool Kumar. In the testimonies of CW1 & CW3 there is no deposition as to criminal intimidation on the part of present accused. So, in the absence of any threat on the part of accused, charge under Section 506 of IPC does not stand proved.

11. In the present complaint, it is mentioned that accused has snatched Rs.10,000/- from his pocket and Rs.497/- from his son's pocket along-with two mobile phones but when complainant appeared in witness box, then CW1 he has not specifically deposed qua amount and number of mobiles snatched by DSP and when CW3 appeared in witness box, then he nowhere deposed as to snatching of money and mobile phone by accused DSP Phool Kumar. This non-deposition of amount and quantity of mobile phones by complainant and altogether non-deposition of fact of snatching of mobile and money by CW3 creates serious doubt in the complaint version qua snatching of mobile and money by the present accused from the complainant and his son.

12. As per complainant he has been hit with danda, legs and fist blow by DSP Phool Kumar and as per him he has not been medically examined on 25.09.2013 for the injury suffered to him and as per him after beating them a false case has been registered against him and his son and they had been produced in the Court and he revealed qua beating to Learned Presiding Officer and he asked for his

medical exaggerate to police but police has not got conducted his medical examination and he also refused the suggestion that police has got conducted his medical examination on 27.09.2013 before producing in the Court but CW2 doctor in his cross-examination admitted that he medico-legally examined Sher Mohammad son of Ayub, present complainant on 25.09.2013 on the application of SI Rajpal in case FIR No.323 of 2013, doctor has opined that there was no fresh injury on the person of Sher Mohammad and proved his report Ex.D1 & Ex.D2. On the same day, he also examined Sabir and proved his report Ex.D3. DW1 SI Rajpal who has arrested the present accused in case FIR No.323/2013 has also specifically deposed that he moved an application to doctor and Dr. Lalit Kumar got conducted his medical examination.

13. Perusal of Ex.D2 shows that SI Rajpal has moved an application on 25.09.2013 to MO CHC Hathin for conducting medical examination of accused Sher Mohammad who is now complainant in the present case and it has been opined by Dr. Lalit Kumar that no fresh injury seen. That means when before production of complainant as accused in case No.357 dated 25.09.2013, P.S. Hathin in the Court he has been medico-legally examined and no fresh injury was found on his person. So, the stand of complainant that he has been beaten by DSP Phool Kumar with danda, legs and fist blow becomes belied. 14. Moreover, CW2 in his examination-in-chief has specifically mentioned that he medico-legally examined Sher Mohammad on 03.10.2013 who mentioned at the time of MLR that he has been caused injury on 25.09.2013 at 9:00 AM but doctor deposed that duration of injury cannot ascertain. When the duration cannot be related to the 25.09.2013 and of the same day there is medical examination of the present complainant Sher Mohammad got conducted by doctor there is no fresh injury was found clearly shows that present accused has not caused injury to the complainant on that day. Furthermore, accused remained in judicial custody since 25.09.2013 to 30.09.2013. In the jail doctors are available what treatment he has taken regarding his injuries in jail and if no treatment taken, then why same has not been taken has not been explained. Therefore, there is nothing on file which could suggest that accused has caused injury to the complainant. 15. Hence, as a sequel of my observations, this court has come to the conclusion that the complainant has failed to bring home the

guilt of the accused beyond shadow of reasonable doubt. Hence, the accused stand acquitted of the charges framed against him by extending benefit of doubt in his favour. His bail bond and surety bond are discharged. File be consigned to the record room after due compliance.

Sd/- Prateek Jain, SDJM, Hathin”

Learned counsel for the petitioner has submitted that the revisional Court has wrongly set aside the order passed by the trial Court, vide which, respondent No. 2 was ordered to be summoned, however, it is not disputed by learned counsel for the petitioner that co-accused Phool Kumar has already been acquitted as noticed above.

Learned counsel for respondent No. 2 has submitted that the evidence, which has come on record against co-accused Phool Kumar, is the same evidence which could be brought on record against respondent No. 2 Mohammad Iliyas and, therefore, virtually, order of acquittal passed by the trial Court otherwise supports the opinion formed by the Sessions Judge while passing impugned order dated 03.08.2017, vide which, revision filed by respondent No. 2 was allowed and he was discharged.

After hearing learned counsel for the parties and in view of the fact that co-accused has already been acquitted by the trial Court, I find no merit in the present petition and the same is dismissed accordingly.

October 30, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No