

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

CRM-M-41319-2017 (O&M)

Date of Decision: May 28, 2018

Dr. Varun Malik, Advocate

..... Petitioner

Versus

S.H.O., Police Station Sector 11, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Mandeep Kumar Dhot, Advocate for the Petitioner.

Ms. Aashima Mor, Assistant Public Prosecutor for U.T.,
Chandigarh.

SUDIP AHLUWALIA, J.

This is an Application under Section 482 Cr.P.C. seeking quashing of the Order dated 23.2.2017 passed by the Ld. Judicial Magistrate Ist Class, Chandigarh (Annexure P-4) vide which the Petitioner's Complaint No.823 of 2017 under Section 156(3) Cr.PC was dismissed, and also against the Order dated 10.10.2017 passed by the Ld. ASJ, Chandigarh (Annexure P-5) whereby the Petitioner's Revision against the dismissal of his complaint by the Ld. Trial Court was dismissed.

2. Background of the matter is that the Petitioner had filed his Application u/s 156(3) Cr.PC (Annexure P-3) in the Court of Ld.

CJM/Illaq Magistrate, Chandigarh seeking direction upon the S.H.O. of Police Station Sector 11, Chandigarh for lodging of an FIR against certain unknown Police Personnel of Haryana and UT, Chandigarh, since no action had been taken on his original complaint dated 17.11.2016 (Annexure P-2) sent directly by the Petitioner to the Officer Incharge of Police Station Sector 11, Chandigarh.

3. The allegations made in the complaint were that he had been defamed as a consequence of certain acts allegedly imputed to unknown Police Personnel of UT, Chandigarh as well as of the State of Haryana, on account of which one K.C.Gupta and some other persons had approached this Court by way of CRM-M-36516 of 2016 for grant of Anticipatory Bail, as according to them they had purchased a House on 30.12.2015, in which one Jagdeep was staying as a Licensee, pursuant to the Licence Deed dated 4.7.2011 for a period of two years only, which was supposed to end on 30.6.2013. The said Jagdeep however, vacated the premises on 3.10.2016 and that 'one Varun Mailk' (which happens to be the name of Petitioner) had thereafter started claiming that he too was a tenant in the property along with the aforesaid Jagdeep, and lodged a complaint against the bail applicants in Chandigarh, Rohtak and Jhajjar, of which they came to know because, allegedly, the police of both the U.T. Chandigarh and Haryana, came and threatened them to put Varun Malik in possession of the second floor of the house, as submitted by their Ld. Senior Counsel. It was contended that Varun Malik was never a tenant either of petitioners No.1 to 3, or of petitioners No.4 and 5, and only because the premises had been

vacated by the aforesaid Jagdeep and vacant possession had been handed over to the bail applicants, that they were being harassed through Police at the instance of the aforesaid Varun Malik, who wanted to take forcible possession of the house.

4. The concerned Bench of this Court thereafter issued notice upon the U.T., Chandigarh as well as the State of Haryana. But it was later revealed that no actual FIR against the said K.C.Gupta and his associates had been lodged either in the Territory of Chandigarh or even in Haryana, where in any case, the jurisdiction did not lie, since the disputed House itself happened to be situated in Chandigarh. The Bail Application was thereafter disposed off with a direction upon both the UT Chandigarh as well as the State of Haryana to give one week's notice to the Applicants in the event of their being sought to be arrested at any time in future if their names transpired in any FIR later on.

5. The present Petitioner after coming to know of the aforesaid Order passed by the Coordinate Bench of this Court on 10.10.2016 in CRM-M-36516-2016 (Annexure P-1) was specifically aggrieved that he had been defamed by some unknown/unidentified vested interests, since he had never resorted to any procedure except that established by law, and that the allegations imputed against him to the effect that some unidentified Police Personnel from U.T., Chandigarh and Haryana had threatened K.C.Gupta and his associates that they would put him in possession of 2nd floor of the house were *per se* defamatory.

6. Both the Ld. Courts below dismissed the Petitioner's complaint as

well as the Revisional Application essentially by observing that his allegations did not constitute any cognizable offence warranting registration of an FIR, and that his supposed defamation by way of false imputation to the effect that he was behind the threatening/intimidation of K.C.Gupta and his associates through unknown Police Personnel of U.T., Chandigarh and Haryana at best disclosed a non-cognizable offence of defamation punishable u/s 500 of the IPC.

7. Ld. counsel for Petitioner has placed on record his Written Arguments in support of the present Application, in which it has been made out that actually a number of cognizable offences have been committed by unknown Police Personnel, if the allegations of K.C.Gupta and his associates as made in their Anticipatory Bail Application were to be true. According to the Petitioner, the unknown Police Personnel had firstly committed the offence of house trespass punishable u/s 452 of the IPC by having gone to the disputed house claimed to have been purchased by K.C.Gupta. In addition, they had committed the offence of criminal intimidation punishable u/s 506 IPC by threatening to dispossess him and put the Petitioner in physical possession of the second floor of the house. Further according to the Petitioner, the said unknown Police Personnel in disobedience of law, with intent to cause injury to K.C.Gupta and others had also committed the offence punishable u/s 166 of the IPC. The Petitioner further contended that if the aforesaid offences were not committed by any actual Police Personnel then those persons who impersonated as such and allegedly threatened K.C.Gupta and others had committed the offence punishable u/s 170 of the

IPC. He therefore, contends that the allegations of K.C.Gupta if true, disclosed a very grave crime inasmuch as *'the instrumentalities of the State* (which in this case would mean the unknown/unidentified Police Personnel) *are committed such crimes against the civilians is like 'fence itself eating the crops'.*

8. This Court after having heard the submissions of Ld. counsel for Petitioner and having carefully considered the written arguments placed on his behalf however, finds no reason to interfere with the impugned orders passed by the Ld. JMIC as well as the Ld. ASJ, Chandigarh. This is so because assuming that the allegations made by K.C.Gupta and his associates of having been threatened by the unknown Police Personnel with dispossession from the second floor of the disputed house which they stated would be passed on to the Petitioner, were to be true, still the same would not amount to any tangible offence *qua* the Petitioner himself, as he was admittedly not present when the unidentified persons/Police Personnel visited K.C.Gupta and extended the threat of dispossession to him. A careful reading of the order passed by a Coordinate Bench of this Court in CRM-M-36516-2016 goes to show that the contention raised in the said Bail Application was that “the Police of both the U.T., Chandigarh and Haryana, came and threatened the Petitioners to put 'Varun Malik' in possession of the second floor of the house, as submitted by Ld. Senior Counsel”. There is no allegation to the effect that those unidentified persons had gone to the Bail Applicants after having made preparation for causing hurt, assault or wrongful restraint to any person. Merely by having threatened to dispossess

the Bail Applicants some time in future can by no stretch of imagination be treated as having made any preparation for causing hurt, assault or wrongful restraint when the alleged culprits had actually gone to the disputed house only to extend the aforesaid threat. As such the offence u/s 452 IPC would not appear to be attracted even *qua* the Bail Applicants who were allegedly threatened, much less against the present petitioner, who was no where in the picture. The other offences u/ss 506 and 166 of the IPC are both non-cognizable according to First Schedule of the Code of Criminal Procedure, while the application of the offence u/s 170 IPC does not arise, since it was no where the allegations of K.C.Gupta and his associates that the persons who allegedly threatened them with dispossession in favour of the Petitioner, were or could have been any kind of imposters, and not the actual Police Personnel.

9. There thus remains no doubt that the Petitioner's attempt of having an FIR registered on the basis of the allegations of K.C.Gupta and his associates, which were raised only to protect themselves against their apprehended arrest, is/was actually a device to unnecessarily fish in troubled water, and with a view to get some evidence to be fished out through the Police Machinery apparently to strengthen the proposed proceedings aimed at prosecuting those who allegedly defamed him, and this oblique motive of the Petitioner to get some evidence collected through Police becomes conspicuous from his contention in the Written Arguments, which are set out as below -

“17. That several CCTV cameras are/were installed in the house

No.67 Sector -15A Chandigarh. So, police is the only arm who has statutory authority to take those CCTV cameras in possession as per law to identify the alleged unknown police personnel who threatened Mr. K.C.Gupta and others”

10. On going through the original complaint sent by the Petitioner to the Officer Incharge of Sector-11 Police Station, Chandigarh dated 17.11.2016 (Annexure P-2), it is seen that he had mentioned therein “*I have already lodged an FIR No.182 dated 07.10.2016 u/s 451, 380, 120-B IPC, (name not mentioned) Police Station against Jagdeep Gulia, Manoj Dhull, Krishan Kumar and other unknown persons*”. It thus becomes clear that the controversy concerning the disputed house in which one Jagdeep was allegedly a Licensee already existed between the Petitioner and other persons since he had lodged the FIR against them on 7.10.2016 itself, which was three days before the order of Coordinate Bench of this Court in CRM-M-36516-2016 was passed on 10.10.2016, on the basis of which the Petitioner allegedly derived his knowledge regarding the threat to applicants K.C.Gupta and his associates, and on account of which, in his application u/s 156 (3) Cr.PC filed in the Court of Ld. CJM/Illaq Magistrate, Chandigarh (Annexure P-3) he had specifically stated -

“4. That due to these allegations, the reputation of the applicant is gravely harmed and an irreparable loss is also inflicted upon stature, persons and reputation of the applicant.”

11. In this view of the matter, both the Ld. Courts below rightly declined to allow registration of an FIR which did not disclose any cognizable offences, much less such offences specifically against the Petitioner, and thereby thwarted his apparent design of getting some evidence collected

through the Police Machinery to pursue his planned action for the alleged defamation, even assuming that any allegations made in the pleadings in judicial proceedings and not in the public domain as such, can be treated as actionable “defamation”.

12. Dismissed.

May 28, 2018
AS

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No