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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2823-2019

Date of Decision : July 23, 2019

Abhishek and others

.... Petitioners

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Ashish Gupta, Advocate,
for the petitioners.

Mr. Pawan Sharda, Sr. DAG, Punjab,
for respondent-State.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of FIR No. 236 dated 2.12.2016 (Annexure P/1) under Sections 323, 506, 379-B, 148 and 149 IPC (though the petitioners have been discharged under Section 379-B IPC by learned Additional Sessions Judge) and Sections 25 and 27 of the Arms Act, registered at Police Station City Moga, District Moga and for quashing of challan dated 12.2.2017 (Annexure P/2) and all subsequent proceedings arising therefrom.

2. Challan in the present case was submitted on 4.5.2017. The petitioners had filed an application before learned Court of Sessions on 19.9.2017 for discharge of the accused and learned Additional Sessions Judge, Moga vide order dated 10.9.2018 (Annexure P/4) had come to the

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conclusion that no offence under Section 379-B IPC is made out and as such all the accused were discharged under Section 379-B IPC. However, the learned Additional Sessions Judge gave finding that rest of the offences are *prima facie* made out against the accused persons which are triable by the Magistrate.

3. Learned counsel for the petitioners, at the time of arguments, contended that as per version in the FIR, alleged injury suffered by the complainant, Khagesh Singla is simpliciter redish contusion on the right side of the face involving eye-lid of right eye and the said injury is so depicted in the MLR, dated 28.11.2016 (Annexure P/5). Quashing of FIR is sought on the grounds that there is no recovery of any weapon for causing the injury and no case is made out for the offence punishable under Sections 506, 148 and 149 IPC and there is no criminal intimidation by any of the petitioners. Both the eye-witnesses have not supported the case of the prosecution at the investigation stage and at the enquiry proceedings. As such, the present FIR is liable to be quashed.

4. Learned State counsel contended that learned Additional Sessions Judge, Moga in his detailed order, Annexure P/4, has discussed the entire matter and recorded observation in detail that only offence under Section 379-B IPC was not made out, rather the case is to proceed for the remaining offences. Learned Additional Sessions Judge observed that it is an admitted fact that the complainant had sustained injury on his right eye as is evident from MLR, Annexure P/5 and further that as per phone call of accused Robin, the other co-accused had also reached Joginder Chowk when accused Arun Kumar, uncle of Robin was armed with a gun.

5. Having considered the submissions made by learned counsel

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for the parties and appraisal of record of this case file, as the matter is to be tried by learned Magistrate, this Court refrains from making any observation as regard to the merits of the case so that the same may not cause prejudice to either of the parties, but at any rate, as per the version as put-forward in the FIR and the detailed order passed by learned Additional Sessions Judge, Moga (Annexure P/4), it is not a case where the FIR is liable to be quashed.

6. Law on the point of quashing of FIR has been laid down by Hon`ble Apex Court in case **State of Haryana and others vs. Ch. Bhajan Lal and others**, 1992 AIR (SC) 604, wherein Hon`ble Apex Court observed as under:-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 F.I.R. 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

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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 F.I.R. 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.”

7. It is settled proposition of law that the power of quashing criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and 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 F.I.R. 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.

The case of the petitioners does not fall within the parameters prescribed

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by Hon`ble Apex Court, reproduced above, in **Ch. Bhajan Lal's case (supra)**. The petitioners have raised certain issues so as to make out a case that they have been falsely implicated in this case. However, without observing anything at this stage, as the matter is before learned trial Judge to consider whether there exists any case against the accused person or not, so that the same may not cause prejudice to either of the parties, this Court would refrain from making any observation on this point. But, it would be within the domain of learned trial Judge to consider the report under Section 173 Cr.P.C., and after hearing learned counsel for both the parties, to pass an order to that effect. Needless to say that if the petitioners are still dissatisfied with the order passed by learned trial Judge, they shall be at liberty to challenge the same but at any rate, at this stage, it is for the trial Judge to consider the report under Section 173 Cr. P.C. on merits and to pass the order. Such was the view taken by Hon`ble Apex Court in **Ch. Bhajan Lal's case (supra)**.

8. In view of the above, the present petition is without any merit and the same stands dismissed. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits of the main case, as the same has been so recorded for a limited purpose of deciding the present petition only.

(SHEKHER DHAWAN)
JUDGE

July 23, 2019

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes