

THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17364-2017 (O&M)

Date of Order:04.10.2019

Nirmal Singh and others

...Petitioners

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bhupender Singh, Advocate,
for the petitioners
Mr. Manish Bansal, DAG, Haryana.

ANIL KSHETARPAL, J(Oral)

Through petition under Section 482 of the Code of Criminal Procedure quashing of FIR No.319 dated 23.07.2016, registered under Sections 406/420/506 of the Indian Penal Code, at Police Station City Kaithal, District Kaithal, along with all consequential proceedings arising from the aforesaid FIR has been sought.

As per the case of the prosecution, first informant/alleged victim is a commission agent working in Kaithal, whereas accused nos.1 and 2 are agriculturists (father and son), whereas accused no.3 Gurnam Singh is Sarpanch of the village. Allegations are that there were dealings between first informant and accused nos.1 and 2 as they used to sell their crops through first informant and borrow amount from him, whenever required. When Rs. 9,17,000/- became due and payable against accused, on demand by the first informant, the balance amount was not paid. On 02.03.2016, a Panchayat (congregation of respectables) was convened and it was agreed that accused nos.1 and 2 shall pay a sum of Rs.5,50,000/- and petitioner No.3 (accused no.3) became guarantor for payment of the amount by accused Nos.1 and 2. A writing was executed and signed by all the

parties. However, still the payment was not made and when first informant went to the village, accused nos.1 and 2 threatened to falsely implicate the first informant in a false case and kill him. On the basis of these allegations, criminal prosecution was set in motion.

As far as non-payment of the loan amount, if any, does not constitute offences under sections 406/420 IPC. It is also born out from the record that accused nos.1 and 2 (petitioner nos.1 and 2 herein) instituted a civil suit for rendition of accounts against the first informant which is pending.

This court has perused the case diary. During investigation police has recorded the statements of Narender Singh, Ram Rattan, Gurmail, Kulwant Singh @ Kala, Arun Kumar, Angrej Singh, petitioner No.1-Nirmal Singh and his son Kulwinder Singh. Narender Singh has stated that there was a settlement which was reduced into writing but amount was not paid and when first informant came to him, he accompanied first informant to the house of Nirmal Singh and on demand of the amount, petitioners no.1 and 2 stated that if next time they come to their residence to demand money, they will kill the first informant. Thereafter, they visited guarantor but he also refused to pay. Ram Rattan has stated that inspite of demand, payment has not been re-paid, although a written agreement was executed. Gurmail Singh has endorsed the statement of Narender Singh. When the statement of Kulwant Singh alias Kala was recorded, he stated that he is Ex. Sarpanch and relative of petitioners no.1 and 2. A court case has been filed by the petitioners against the commission agent for rendition of accounts and the decision of the court shall be binding. First informant-Arun Kumar endorsed the statement given in the application. Angrej Singh also

endorsed the statement of Narender Singh. When Nirmal Singh and Kulwidner Singh, accused nos.1 and 2 were called to join investigation, they stated that first informant had fudged the accounts and started demanding Rs.9,17,000/-. However, when accounts were settled before the Panchayat, it came that the amount due and payable is Rs. 5,50,0000/-. He further stated that now case has been filed in the court and decision of the case shall be binding. The statement of his father was endorsed by Kulwant Singh.

Now stage is set for examining whether criminal offence as is alleged is made out or not?.

Non payment of loan amount is itself not an offence. Monetary transactions between the parties is admitted. Hence, offences under Section 406/420 IPC are not made out.

Now let us examine offence under Section 506 IPC. Criminal intimidation has been defined in Section 503 IPC. Criminal intimidation is an offence only if it falls within the four corners of criminal intimidation defined in Section 503 IPC. However, the prosecuting agency should be careful in implicating someone under the aforesaid provision because this is largely misused.

As noticed, only Narender Singh has stated before the police that accused nos.1 and 2 (petitioner no.1 and 2 herein) had threatened to kill the first informant if they come back to their house to demand money again. In such circumstances, the threat is only when first informant comes to the house of petitioners no.1 and 2 forcing them to demand money. Civil suit in this regard has already been filed. No other witness has even stated this fact. First informant has of course stated, however, his evidence is required

to be corroborated. It is the duty of the prosecution to collect sufficient evidence before presenting the final report. Section 169 Cr.P.C. mandates that, If upon an investigation, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate he shall furnish a report to the Magistrate and release the accused. Section 169 is extracted as under:-

169. Release of accused when evidence deficient. If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

It is apparent that a civil dispute is sought to be a given a colour of criminal offences. Dispute is with regard to settlement of accounts between the parties for which a civil suit is pending.

In view of the aforesaid discussion, present petition is allowed. FIR No.319 dated 23.07.2016, registered under Sections 406/420/506 of the Indian Penal Code, at Police Station City Kaithal, District Kaithal, along with all consequential proceedings are ordered to be quashed.

04th October , 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No