

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

CRM-M-216-2018 (O&M)
Date of Decision:- 8.11.2019

Balwant Singh and others

... Petitioners

Versus

Ranjit Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Tarun Sharma, Advocate for petitioner No.1.

None for petitioners No. 2 and 3.

Mr. Piyush Sharma, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. The petitioners have approached this Court seeking quashing of complaint No.COMI/117/214 (Annexure P-1) as well as for setting aside of order dated 7.7.2014 (Annexure P-10) and also order dated 16.5.2017 (Annexure P-2) vide which the petitioners have been summoned to face trial for offences under Sections 452, 354, 354-B, 34 IPC. The petitioners also challenge order dated 7.10.2017 (Annexure P-3) vide which a revision petition filed by the petitioners challenging their summoning order dated 16.5.2017 has been dismissed by the Court of Additional Sessions Judge, Ferozepur.
2. The learned counsel for the petitioners has submitted that the aforesaid complaint has been filed as a counterblast to FIR No. 45 dated 11.3.2011

under Sections 420/406 IPC, Police Station City, Ferozepur which was lodged by petitioner No. 1 against the complainant Ranjit Kaur's son and her husband and is an apparent abuse of process of law wherein the complainant has cooked up false allegations to implicate and harass the petitioners. It has been submitted that FIR No. 45 under Sections 420/406 IPC, Police Station City Ferozepur was lodged on 11.3.2011 at the instance of petitioner No. 1 Balwant Singh against complainant's son Daler Singh and complainant's husband namely Jasvir Singh wherein it has been alleged that Daler Singh had opened an office at Sabzi Mandi Road, Ferozepur and that the petitioner Balwant Singh had approached him for sending his son Gurinder Singh abroad on a study visa to U.K. for an amount of ₹ 8 lacs. It is alleged that although 4200 pounds had been given to Daler Singh but despite a period of 6 months having elapsed, the visa was not got issued and nor the amount was returned. It is further alleged that upon insistence of Daler Singh for payment of the entire amount, an amount of ₹ 5 lacs had been paid to him and another amount of ₹ 3.5 lacs was paid to his father Jasvir Singh. Subsequently, when the petitioners demanded their money back as visa had not been got issued, Daler Singh and Jasvir Singh returned an amount of ₹50,000/- only but did not return the balance amount.

3. The learned counsel for the petitioner has submitted that pursuant to lodging of the aforesaid FIR, the respondent Ranjit Kaur, who is mother of Daler Singh and wife of Jasvir Singh, instituted the present complaint against the petitioners by levelling false allegations of molestation. It has further been submitted that respondent concealed the factum that an inquiry had been conducted in detail in a similar complaint (Annexure P-1)

made by respondent on an earlier occasion and wherein the police had found the allegations to be false. The learned counsel in this regard has referred to the Inquiry Report dated 10.4.2014 (Annexure P-8). It has further been submitted that the trial Court fell in error in proceeding with the matter hurriedly and while not even choosing to call for a report in terms of Section 210 Cr.P.C.

4. The learned counsel for the complainant, on the other hand has submitted that the impugned order i.e. summoning order dated 16.5.2017 is a well reasoned order and was passed since the evidence led by the complainant clearly shows that the petitioners had molested the complainant. The learned counsel has further submitted that once the trial Court had chosen to summon the accused on the basis of preliminary evidence, the High Court in exercise of its inherent jurisdiction should not ordinarily quash the complaint as the correctness or falsity of the allegations can solely be decided by the trial Court after evidence is adduced before it. The learned counsel in order to hammer forth his aforesaid submission places reliance upon a judgment of Hon'ble Supreme Court reported as 2019(2) RCR (Criminal) 38 Sau. Kamal Shivaji Pokarnekar vs. State of Maharashtra and others.
5. It has further been submitted that the complainant had not made any concealment and had clearly disclosed about the factum of filing of earlier complaint with the police and that as far as inquiry report is concerned, the complainant had never been communicated about any such report. A prayer has, thus, been made for dismissal of the petition.
6. I have considered rival submissions addressed before this Court.

7. The sequence of events does show that while it was in the year 2011 that one FIR was lodged at the instance of petitioner No. 1 against son of the complainant whereas the present complaint came to be instituted later in the year 2014. However, the mere fact that the complaint came to be instituted at a later point of time may not be sufficient enough to hold that the same has been instituted falsely as a counterblast. It is the facts which would be required to be examined to reach at any definite conclusion in this regard.
8. The allegations set forth in complaint dated 7.7.2014, as extracted from the summoning order (Annexure P-2) read as follows :-

“The relevant facts of the present complaint are that accused registered a case bearing FIR No. 45 dated 11.3.2011 PS City Ferozepur against the husband and son of the complainant applied anticipatory bail before Hon'ble High Court and same was allowed by the Hon'ble High Court vide order dated 14.7.2011. On 11.09.2013 at about 9.30 a.m., the accused alongwith some police officials of C.I.A. Staff Ferozepur came to the house of complainant, the son and husband of the complainant showed the order dated 14.07.2011 to the police officials and then the police left the spot. In the meantime, the accused forcibly entered into the house of the complainant, accused Gurinder Singh, Balkar Singh and Balwant Singh pounced upon the complainant and abused her. The accused assaulted the complainant and pushed her from her breast after using criminal force with intent to outrage her modesty to disrobe the complainant. Then tore away the clothes of complainant.”

9. The respondent herself stepped into the witness box as CW-1 and also examined her son Daler Singh as CW-2 apart from examining CW-3 Head Constable Joginder Kumar in preliminary evidence. Since the complainant

and her son had categorically deposed to the effect that the petitioners had assailed and outraged complainant's modesty, the trial Court vide impugned order proceeded to summon the accused.

10.A perusal of the impugned order shows that although CW-3 Head Constable Joginder Kumar had proved on record application dated 11.9.2013, but the trial Court for reasons best known did not choose to call for any report in the matter in respect of the said complaint. In fact, the said complaint had been got enquired into by the Superintendent of Police and the allegations levelled therein had been found to be false. The relevant extract from the said report (Annexure P-8) reads as follows :-

“It is submitted that the inquiry of the aforesaid application has been got conducted through SHO PS Kulgarhi. That during inquiry it has been found that FIR No. 45 dated 11.3.2011 U/s 420, 120-B IPC, PS City Ferozepur has been got registered by respondent Balwant Singh etc. against the husband and son of the applicant. The challan of which was presented in the court on 14.08.2012 in which charge has been framed on 11.04.14. It has been found that this application has been filed in order to pressurize Balwant Singh etc. for effecting compromise in the FIR registered by them. Therefore, no further action is required on the application. The application is ordered to be consigned to the record room.”

11.It will not be out of place to mention that the aforesaid report was made after associating the complainant Ranjit Kaur whose statement had also been recorded during the course of the said inquiry, as is evident from the detailed inquiry report (Annexure P-8). Apart from the aforestated position, the manner in which the offence is alleged to have committed is rather

improbable as it is highly unlikely that the petitioners would have committed the alleged offences while being accompanied by the police officials, who are stated to have left after they were shown bail order. It is extremely unlikely that the father i.e. petitioner No. 1 Balwant Singh aged about 61 years accompanied by two of his sons i.e. petitioner No. 2 and 3 would go together to molest a lady. In these circumstances, this Court would certainly be inclined to accept the contentions that the complaint has been instituted as a counterblast to pressurize the petitioners. Further, once it had come to notice of the Court that a complaint had also been submitted by the complainant to the police which infact had been got enquired into and had been found false, the Court should, ideally have called for the record in respect of the same from the police. The continuance of proceedings on the basis of complaint is nothing but an abuse of process of law and if allowed to continue, would result in traversity of justice.

12.The petition, as such, is accepted and the complaint and the summoning order dated 7.7.2014 as well as the order dated 16.5.2017 (Annexure P-2) and the entire proceedings arising out of complaint are hereby set aside.

8.11.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No