

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

CRM-M No.34912 of 2016 (O&M)

Decided on: 31.10.2019

Fakir Chand

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. I.S. Pabla, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. G.C. Shahpuri, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of complaint No.545-1 dated 24.11.2012 (Annexure P-1) and for setting-aside the order dated 14.09.2016 passed by the Additional Sessions Judge, Yamuna Nagar vide which the revision petition filed by respondent No.2 was partly allowed and further to restore the order dated 30.01.2014 vide which the trial Court dismissed the complaint filed by respondent No.2.

Brief facts of the case are that the petitioner got an FIR No.146 dated 31.08.2010 registered at Police Station Chhapar, District Yamuna Nagar under Sections 148, 149, 323, 452, 506 of the Indian Penal Code, 1860 (in short 'IPC') against respondent No.2 – Ram Kumar and some other persons with the allegation that on 30.08.2010, they entered the house of the petitioner and caused injuries to the petitioner and his wife. Thereafter, respondent No.2 filed a complaint

dated 09.12.2010 (Annexure P-1) against the petitioner and 08 other persons under Sections 323, 452, 506 IPC.

The Illaqa Magistrate sought a report from the concerned Police Station under Section 202 Cr.P.C. and after recording the statement of the concerned witnesses, the police submitted a report on 17.12.2013 that the complaint filed by respondent No.2 was, in fact, misuse of the process of law and by self-inflicting the injuries in order to avoid the prosecution in the FIR case, he has filed the complaint.

Thereafter, the trial Court after recording the preliminary evidence, at the stage of summoning of the accused persons, found that no *prima facie* case is made out against all the accused persons and dismissed the complaint. The operative part of the order dated 30.01.2014 reads as under:-

“4. In order to establish prima-facie case, complainant has examined Sh. Gian Krishan Chand as CW1 who has deposed that complainant was employed as Operator by the J.E. Incharge of the Tubewell but accused wanted to have Tubewell. On 30.08.2010 at about 11.00/11.15, accused No.1 entered in the house of the respondent. Accused Sulekh Chand gave him lathi blow on the body of Ram Kumar. Ravi hit him with danda. Seema and Bala Devi gave fist and blows. On hearing noise, accused ran away and the complainant saved from the clutches of the accused.

5. Complainant Ram Kumar himself appeared into witness box as CW2 who reiterated the version of the complaint. He has deposed that accused Ravi son of Sulekh Chand gave him lathi blow, Ravi hit him with danda, Seema Devi and Bala Devi gave him fist and blow. Usha Devi, Gurnam, Sawan Ram, Krishan Chand reached

on the spot and took him to Civil Hospital, Yamuna Nagar.

6. *Kanwar Lal has also been examined as CW3 who has deposed that accused was nominated for supply Operating Tubewell being by the J.E. Incharge of Tubewell.*

7. *In order to outside injury, complainant has examined CW4 who has deposed that on 31.08.2010, he medico-legally examined Ram Kumar. Lacerated wound of size 2.5 cm x 0.5 cm on the left side of chest of Ram Kumar.*

8. *Complainant himself appeared in the witness box as CW2 and reiterated the version of complaint in his evidence and in his statement on oath. He has deposed that accused Sulekh Chand gave him lathi blow. Ravi gave him hit with danda and Bala Devi and Seema Devi gave him fist blow. He has deposed that accused was holding rod in their hands. She gave blow on his chest, but he has not mentioned the name of the accused in his evidence, who gave him injury with rod. He has deposed that other accused namely Sulekh Chand, Ravi gave him lathi blow but no injury has suffered by the complainant with lathi. As per statement of PW4 Dr. Rajesh Garg. CW1 namely Gian Krishan Chand reached on the spot after the occurrence of incident. He is unable to state anything in regard to the injuries sustained by the complainant. Evidence of CW3 Kanwar Lal SDO is not relevant in regard to the injuries if any suffered by the complainant. On perusal of document, it is apparent that a case is pending against the accused for commission of offence punishable under Sections 148, 149, 323, 452, 325, 506 of IPC. FIR No.146 dated 31.08.2010. It appears that the present complaint is counter blast of the criminal case pending against the accused. Moreover, no prima-facie case is made out against the accused persons for*

commission of offence under Sections 323, 452, 506, 34 of Indian Penal Code. Hence, complaint stands dismissed and disposed of. File be consigned to record room after due compliance.”

Thereafter, respondent No.2/complainant preferred a revision before the Sessions Court and the same was allowed vide order dated 11.11.2014 qua the petitioner and the case was remanded back. Since the revision was allowed without affording an opportunity of hearing to the petitioner, the petitioner filed a petition i.e. CRM-M No.18932 of 2015 before this Court and vide order dated 17.12.2015, this Court set-aside the aforesaid order dated 11.11.2014 and directed the Additional Sessions Judge to decide the revision afresh after affording an opportunity of hearing to the petitioner.

Thereafter, the Additional Sessions Judge, again vide order dated 14.09.2016 passed the impugned order observing that *prima facie* offence against the petitioner is made out and therefore, a direction was again issued to the trial Court to pass an appropriate order afresh after appreciating the evidence and other materials on record.

The petitioner has filed the present petition praying for quashing of the complaint (Annexure P-1) as well as the order dated 14.09.2016 passed by the Additional Sessions Judge, Yamuna Nagar.

Counsel for the petitioner has submitted that while passing the impugned order, the Revisional Court has not taken into consideration the report under Section 202 Cr.P.C. in which the police has formed an opinion that by self-inflicting the injuries, the complainant has filed a complaint as a counter-blast to the FIR No.146 dated 31.08.2010.

Counsel for the petitioner has further submitted that, in fact, while appearing as CW2, the respondent No.2 – Ram Kumar has deposed that in the year 2010, during the Panchayat Election, accused No.3 was elected as a Sarpanch and the other accused persons belong to his group and they were pressurizing him to give the key of the government tubewell and on that account, the accused persons caused injuries to him and his wife. It is further submitted that even in the statement of a witness – Krishan Chand, a similar version is given and both the complainant and this witness have nowhere explained about the injuries caused by the petitioner – Fakir Chand and his wife and the involvement of the complainant in the aforesaid FIR No.146 dated 31.08.2010 where Ram Kumar and others are facing the trial. Counsel for the petitioner has, thus, argued that on account of concealing the fact that the complainant – Ram Kumar himself is facing the trial in the aforesaid FIR No.146, registered at the instance of the petitioner – Fakir Chand, the evidence led by the complainant do not inspire any confidence.

Counsel for the petitioner has further argued that on the appreciation of the evidence, the trial Court has dismissed the complaint in *toto*, however, the Revisional Court has partly relied upon the statement of the complainant and partly disbelieved the same while recording a finding that no *prima facie* offence is made out against accused No.s2 to 9 whereas on the same set of evidence, it is held that a *prima facie* offence is made out against the petitioner – Fakir Chand under Sections 323 and 506 IPC, despite the fact that the petitioner himself is an injured person, who got the FIR No.146 dated 31.08.2010

registered against Ram Kumar and others. It is further argued that even the Revisional Court has not discussed this aspect that the complainant – Ram Kumar and 05 other persons are facing the trial. It is also submitted that in the FIR case, the entire evidence of the prosecution/petitioner stands recorded and the case is at the final stage.

Counsel for the petitioner has referred to the reply filed by the Deputy Superintendent of Police, Jagadhri to submit that the factum of the report under Section 202 Cr.P.C. being in favour of the petitioner is not denied.

Counsel for the petitioner has relied upon the judgment **“Rajendra Rajoriya vs Jagat Narain Thapak and another”, 2018(2) JT 471**, wherein the Hon'ble Supreme Court has held as under:-

“The ambit of revisional jurisdiction is well settled. Section 397 of Cr.P.C., 1973 empowers the Sessions Judge to call for and examine the record of any proceeding before any subordinate criminal court situate within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such subordinate Court.” and further it has been observed that “On bare perusal of this provision it is clear that the impugned order cannot be passed under Section 398 of the Code. The word 'may direct' has been used by the legislation in this provision. It gives wide discretion to the court to order further enquiry. Sessions court has no power to take cognizance of the offence, assess the offence and reach its own conclusion whether there is ground for proceeding with complaint or not and further to direct a Magistrate with regard to registration of a complaint on finding a prima facie case.”

Counsel for the petitioner has also argued that the Revisional Court has formed an opinion that *prima facie* offence against the petitioner/accused – Fakir Chand has come on record to proceed against him for commission of offence under Sections 323 and 506 IPC and such an observation is uncalled for in view of ***Rajendra Rajoriya's case (supra)***.

In reply, counsel for the State as well as counsel for respondent No.2 have argued that the impugned order dated 14.09.2016 passed by the Additional Sessions Judge is based on appreciation of evidence. It is further submitted that CW4 – Dr. Rajesh Virk has stated that the complainant suffered an injury in the shape of a lacerated wound on the upper part of the chest and, therefore, the testimony of the complainant is supported by the medical evidence. It is also submitted that even in the report under Section 202 Cr.P.C., there is a reference of the injuries sustained by the complainant and the police could not give an observation that it can be self-inflicted injury.

However, a perusal of the reply filed by respondent No.2 also do not explain about the registration of FIR No.146 dated 31.08.2010, against the complainant as in para 8 (iii), it is only explained that the impugned complaint is not a counter-blast to the FIR No.146.

After hearing the counsel for the parties, I find merit in the present petition for the following reasons:-

a) In view of the Rajendra Rajoriya's case (supra), the Additional Sessions Judge while exercising the revisional power cannot direct a Magistrate as to the manner in which it should proceed further. In para 11 of

this impugned order, the Revisional Court has on one side recorded a finding that prima facie offence under Sections 323 and 506 IPC is made out against the petitioner whereas in para 13 of the same order, the matter is remanded back to the trial Court to pass an appropriate order after application of mind afresh to the evidence and other materials on the case file in the light of the observation made hereinabove. Such an observation by the Revisional Court will be binding on the trial Court and the trial Court, in such circumstances, cannot pass an order which is contrary to the order passed by the Revisional Court.

b) Even otherwise, it is undisputed that in the report under Section 202 Cr.P.C., the police has stated that the complaint has been filed by respondent No.2/complainant by self-inflicting injuries as a counter-blast to the FIR No.146 dated 31.08.2010.

A perusal of the statement of CW2 and CW4 as well as the impugned complaint (Annexure P1) nowhere explain about the injuries sustained by the petitioner – Fakir Chand and his wife on the basis of which, the complainant party was involved in FIR No.146 dated 31.08.2010.

A perusal of all these documents clearly show that there is not even a passing reference of FIR No.146 in which the complainant – Ram Kumar and 05 other persons are facing the trial.

A perusal of the impugned order also show that there is no reference with regard to this aspect of the case.

c) It is the case of the petitioner that FIR No.146 was registered against Ram Kumar and others with the allegations that on 30.08.2010 they entered the house of the petitioner – Fakir Chand and caused injuries to him and his wife, therefore, when Ram

Kumar filed the impugned complaint and appeared as his own witness, he failed to explain the place of occurrence which is stated in FIR No.146 dated 31.08.2010 and rather in the complaint in his statement, he has stated that the place of occurrence was the house of the complainant – Ram Kumar, which also support the enquiry report of the police under Section 202 Cr.P.C. that he has filed a false complaint.

d) Hence, no prima facie case is made out against all the 09 persons, who are arrayed as an accused in the complaint and the finding recorded by the Revisional Court is based on the same set of evidence on which it is held that only prima facie case under Sections 323 and 506 IPC is made out against one accused i.e. the petitioner is not the correct appreciation of the statements of CW1 to CW3 as the Revisional Court has partly relied upon their statements and partly disbelieved the same qua accused Nos.2 to 9.

In view of what has been discussed hereinbefore, the present petition is allowed, the impugned complaint No.545-1 dated 24.11.2012 (Annexure P-1) is quashed and the order dated 14.09.2016 (Annexure P-3) passed by the Revisional Court is hereby set-aside and the order dated 30.01.2014 (Annexure P-2) passed by the trial Court dismissing the complaint is upheld.

(ARVIND SINGH SANGWAN)
JUDGE

31.10.2019
yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No