

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7374-2017 (O&M)

Date of decision: 13.03.2019

Narender Yadav

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Hundal, Sr. Advocate with
Mr. Jashandeep Singh, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

Mr. Vishal R. Lamba, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No.107 dated 08.06.2016 under Sections 325, 341, 506, 34, 120-B IPC, registered at Police Station Rampura, District Rewari and all the subsequent proceedings arising therefrom.

Brief facts of the case are that respondent No.2-complainant got the aforesaid FIR registered with the allegations that on 07.06.2016, he along with his son Surender Singh had gone to District Courts, Rewari, as the judgment was to be pronounced in their case on that date. In the

evening, both of them were going back to their village on the motorcycle bearing registration No.HR-43B-8014. When they reached near the boundary of RBS School, all of a sudden, 05 boys came on two motorcycles and intercepted their motorcycle by stopping in front of them. Out of these boys, one boy was Dharmender son of Suraj Bhan, resident of Sham Nagar and he took an iron rod and started beating the complainant, while he was sitting on the motorcycle. On seeing this, his son ran away from the spot and all the five boys gave fist and kick blows and then accused persons ran away from the spot.

After completing the investigation, police submitted the challan under Section 173 Cr.P.C. and found that as per the MLR, the injured suffered three injuries on upper lip and loss of teeth. Thereafter, Dharmender son of Suraj Bhan was arrested and the motorcycle was recovered. Co-accused Mohit son of Karan Singh and Bikesh son of Bijender Singh were also arrested later on and another motorcycle was recovered from Bikesh. Thereafter, petitioner Narender Yadav son of Satbir Singh was also arrested. However, in this report under Section 173 Cr.P.C., it is not mentioned how the petitioner was involved in the present FIR.

Learned senior counsel for the petitioner has submitted that the petitioner and his father are practising lawyers at Rewari and in a case titled as Komal Vs. Dharmender, they are appearing for Dharmender, co-accused and Komal is daughter-in-law of present complainant Birender Singh. Learned senior counsel has relied upon a photocopy of certified copy of power of attorney of the said case (Annexure P-10), to submit that the

petitioner and his father were in fact defending Dharmender in one case titled as State Vs. Dharmender, which was pertaining to FIR No.37 dated 27.02.2011 under Section 509 IPC, Police Station Kosli and the same was decided on 11.04.2014 acquitting Dharmender. In this case, complainant is Komal wife of Surender Kumar, son of present complainant Birender Singh. Learned senior counsel has thus argued that since the petitioner was defending the aforesaid Dharmender in the case filed by Komal, daughter-in-law of the complainant, he has been falsely implicated in the present FIR, as on the date of FIR, the Court of Additional Sessions Judge, Rewari dismissed the appeal filed by Komal against judgment of acquittal of Dharmender on 07.06.2016 and on the same day, impugned FIR was registered by the complainant, with a malafide motive that the petitioner, being a lawyer, was defending co-accused Dharmender in the said case, which was not appreciated by the complainant and he was looking for an opportunity to involve the petitioner or his father, so as to deter them from representing Dharmender, in the litigations pending against him.

Learned senior counsel for the petitioner has further submitted that even a complaint was submitted by father of the petitioner on 10.08.2016 to the Superintendent of Police, Rewari, highlighting all the facts that the petitioner has been falsely implicated in the FIR on account of the fact that he and his son are representing Dharmender against the interest of the complainant and his daughter-in-law Komal. Learned senior counsel has placed reliance upon the affidavits of co-accused Mohit and Bikesh, on whose disclosure statements, the petitioner was implicated in the present

case, in which they have stated that by taking their signatures on blank papers, the police recorded the disclosure statement that petitioner Narender Yadav was also involved in the incident, where they have not made any such statement before the police.

In reply, learned State counsel, on the basis of affidavit of the Deputy Superintendent of Police, HQ, Rewari, has supported the prosecution version and stated that the petitioner was nominated as an accused on the basis of disclosure statement of co-accused Dharmender, Mohit and Bikesh and therefore, no case for quashing of the FIR is made out.

Learned counsel appearing for respondent No.2-complainant also argued on the same lines.

During the course of arguments, photocopies of disclosure statements in vernacular of all the three co-accused Dharmender, Mohit and Bikesh are taken on record as Mark 'X', 'Y' & 'Z'.

A perusal of the disclosure statement of main accused Dharmender would reveal that he has named only two persons Mohit and Bikesh, who were accompanying him, when he caused injuries to the complainant, however, subsequently, when Mohit and Bikesh were arrested, in their statements, it has come that petitioner Narender Yadav was also with them, however, in the statements, Narender Yadav is not attributed any specific role.

In reply, learned senior counsel for the petitioner has argued that in para No.10 of the petition, a specific plea has been taken that in

aforesaid FIR No.37, the petitioner and his father are the counsel for Dharmender in an appeal filed by daughter-in-law of the complainant i.e. Komal, which was decided on the date of the alleged incident. In the corresponding para No.10 of the reply filed by DSP, this fact is not disputed and rather is admitted to be matter of record.

After hearing learned counsel for the parties, I find merit in the present petition qua the petitioner.

(a) Once it is admitted by the DSP on affidavit that the petitioner and his father Satbir Singh are representing co-accused Dharmender in the litigation against Komal i.e. in aforesaid FIR No.37, in which Dharmender was acquitted on 11.04.2014 and an appeal was filed by Komal challenging this judgment, in which the petitioner and his father had filed the power of attorney on behalf of Dharmender and ultimately, the appeal was dismissed on 07.06.2016 and on the same day, the impugned FIR was registered and the petitioner was later on nominated as an accused on the basis of disclosure statement made by co-accused Mohit and Bikesh.

(b) It is worth noticing here that in the first disclosure statement made by Dharmender, he has nowhere stated the name of the petitioner, however, he has given the name of two other co-accused Mohit and Bikesh and in subsequent disclosure statements of these two co-accused, name of the petitioner had surfaced.

(c) Apparently, the prosecution of the petitioner is malafide, as he and his father were defending co-accused Dharmender in a complaint filed by Komal, daughter-in-law of the complainant, in which Dharmender was

acquitted by the trial Court as well as by the lower appellate Court. Therefore, it cannot be held that the complainant, who had only named co-accused Dharmender, at the first instance, in the FIR, could not identify the petitioner, if he was present at the spot, as he was representing aforesaid Dharmender in the Court and therefore, naming of the petitioner at a subsequent stage, in the second disclosure of co-accused, is nothing but an act of malafide on the part of the complainant.

(d) If in such manner, the litigations are allowed to involve the lawyers who are opposing them in Court cases, in false criminal case, in aid of disclosure statements recorded in police custody, though the same accused had later on sworn affidavits, to the contrary, the lawyers would not be able to provide their service without fear and as such it will effect the smooth working of the judicial system.

In view of judgment of the Hon'ble Supreme Court in **State of Haryana and others Vs. Ch. Bhajan Lal and others, 1991 (1) RCR (Crl.) 383**, this petition is allowed and the impugned FIR No.107 dated 08.06.2016 under Sections 325, 341, 506, 34, 120-B IPC, registered at Police Station Rampura, District Rewari and all the subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

[ARVIND SINGH SANGWAN]
JUDGE

13.03.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No