

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.-M-15398 of 2018
Date of Decision: November 06, 2019.

Radhey Shyam and anotherPetitioners

versus

Bhim SinghRespondent

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL.

Present: Mr.H.P.S.Ghuman, Advocate, for the petitioner.

Mr.Pawan Kumar Hooda, Advocate, for the respondent.

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Anil Kshetarpal, J. (Oral)

The petitioners-accused Nos.1 & 2 pray for quashing of Criminal Complaint No.19 of 2017 dated 12.01.2017, filed under Sections 342, 323, 506, 120-B IPC and consequential summoning order dated 02.02.2018.

The precise allegations made in the complaint are as under:-

“2. That the accused No.6 had lodged a false FIR No.599 dated 25.09.2016 under Sections 406, 420 IPC at Police Station Samalkhan against complainant and Jagbir Singh in the judicial courts at Samalkhan, in which the complainant has obtained bail. However, defendant No.6 had filed an application in the Court of learned District & Sessions Judge, Panipat for the cancellation of the bail of the complainant and the same has been dismissed by the court of learned District & Sessions Judge, Panipat. Thereafter, accused no.6 had moved before the Hon'ble

Punjab and Haryana High Court and the Hon'ble High Court vide its order dated 05.10.2017 had ordered to cancel the bail of the complainant. Against the said order of Hon'ble High Court, the complainant had resorted to Hon'ble Apex Court in Delhi and in the appeal filed by it, the Hon'ble Apex Court vide its order dated 11.09.2017 had stayed the arrest of the complainant.

3. That accused No.6 keeps enmity with the complainant, accused No.5 is son of accused No.6. The accused No.5 and 6 in collusion with accused No.1 to 4 had planned to illegally arrest the complainant and accordingly made several visits to his home without any search warrant. And accused No.1 many times between the dated 3.8.2017 to 10.09.2017 visited the house of the complainant, without any warrant alongwith accused No.2 to 4. Many times they made raid during day and night time in the house of the complainant. Thereafter, complainant after obtaining the copy of order from internet dated 11.09.2017 passed by Hon'ble Apex Court regarding the stay of his arrest by the police went to Police Chowki Ludana alongwith 10-12 respectable persons including Rajesh son of Ram Singh, Kaptan S.o Sultan and Rohtash S/o Inder etc., and presented the said order to the accused No.1 but the accused No.1 in complete violation of said order informed the Police Chowki Bhapra, Chowki Samalkha and called accused

No.2 to 6 and then after illegally arresting the complainant handed over to them. Thereafter, accused persons illegally beat up the complainant in the police custody and threatened him to compromise the matter with Radhey Shyam and return his amount otherwise he would be done to death.

4. Thereafter, on dated 13.09.2017, he was produced before the learned court at Samalkhan and in view of order dated 11.09.2017 passed by Hon'ble Apex Court, he was released by the Court and the police was snubbed for its illegal act.

5. That the accused persons had kept the complainant illegally in the police custody from 12.09.2017 to 13.09.2017 and had tortured and threatened the complainant, so the accused had committed the offences punishable under Sections 323, 342, 506, 120-B IPC. And caused the loss of reputation of the complainant.”

Learned Judicial Magistrate, after appreciating the material which has come on record, ordered summoning of the petitioners and other accused (police officials) by recording as under:-

“6. In the present complaint, complainant besides examining himself as CW-1 has also examined Suba Singh as CE-2 Kaptan as CW-3, Baljinder as CW-4 and Rajesh as CW-5 and all of them have fully supported and corroborated the case of complainant regarding the alleged incident and the specific role of all the accused

persons. Perusal of order dated 11.09.2017 passed by Hon'ble Apex Court i.e. Mark-CA transpires that the Hon'ble Apex Court had passed an order of stay against the order of Hon'ble High Court in petition titled as Bhim Singh vs. Radhey Shyam. Prima facie, the stay order dated 11.09.2017 placed on the case file by the complainant is in consonance with the story put forward by the complainant in the present complaint and perusal of order dated 13.09.2017 passed by learned ACJ/SDJM, Samalkha reveals that on the basis of above said order of Hon'ble Apex Court, the complainant was released from custody which prima facie establishes the custody of the complainant despite the passing of specific order of stay against his arrest by the Hon'ble Apex Court. Thus order evidence coupled with documentary evidence placed on the case file by the complainant are sufficient enough at this stage of the complainant to believe upon his story regarding his illegal detention by the accused persons as well as the allegations of torture and threat made by the accused persons.”

Learned counsel for the petitioners submits that the petitioners are sought to be falsely implicated in the case as they had lodged FIR in which the petitioners have been convicted.

Be that as it may, in the considered view of this Court, disputed questions of facts cannot be adjudicated upon while exercising jurisdiction under Section 482 Cr.P.C. at initial stage. The disputed questions of facts

are required to be adjudicated after the parties have led evidence. Hence, the petition is disposed of relegating the petitioners to the remedy available before the learned Magistrate where criminal complaint is pending.

November 06, 2019

mohinder

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No