

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

Crl. Misc. M 3549 of 2016 (O&M)
Date of decision: 29.1.2020

Dr. Col. Retd. Subhash Chandra Talwar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.S. Mor, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

Mr. Amit Khatkar, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to quash FIR No. 32 dated 8.11.2015 (Annexure P/1) registered under Sections 354, 354-A (1), 354-B, 506, 509 and 294 IPC at Police Station Sector 51, Gurgaon, and all subsequent proceedings arising therefrom.

2. In brief, the facts are that the petitioner is a senior citizen, aged about 76 (as of now aged about 80 years), who retired as Colonel from the Indian army. The aforesaid FIR came to be lodged against him by respondent No.2—Mrs. Malti Bhatnagar, resident of G-101, Ambience Lagoon Apartment, Gurgaon. It is stated that the petitioner is residing within the same Society in F Block, whereas respondent No.2 is resident of G Block. The petitioner parked his car in the parking slot available for the residents of F Block, which purportedly had been sold by the builder to Mr.

Satish Bhatnagar, husband of respondent No.2/complainant and in order to harass the petitioner Mr. Bhatnagar parked his car in front of the petitioner's car, blocking the same for three days causing severe hardship and inconvenience to the petitioner. Respondent No.2 used unparliamentary and defamatory comments against the petitioner on Builders Group on Public Forum (Whatsapp Group). On coming to know about the defamatory comments and the communication on the Whatsapp group, the petitioner got a legal notice issued to the complainant on 2.11.2015 asking damages for publicly defaming the petitioner and it is alleged that on account of the legal notice, respondent No.2, as a counter-blast filed a false and fabricated complaint against the petitioner. The petitioner had thereafter applied for anticipatory bail before the District Judge, Gurgaon and submitted certain undertakings/character certificates issued by several residents, including lady members of the Society and based on the said character certificates, anticipatory bail was allowed to him. Aggrieved against lodging of the FIR against the petitioner, he has approached this Court for quashing of the same.

3. Learned counsel appearing on behalf of the petitioner stresses that the instant FIR lodged against the petitioner is patently based on the false and frivolous allegations. The contents of the FIR itself would reflect that the entire dispute has arisen on account of a parking slot and allegations that any untoward incident took place leading to invoking of Sections 354, 354-A (1), 354-B, 506, 509 and 294 IPC is not substantiated. It is argued that the entire tone and tenor of the FIR would reflect that the dispute

pertains to parking of a car in the car parking space in F Block, which was not permissible considering the fact that respondent No.2 and her husband are residents of G Block.

4. Per contra, learned counsel for the respondents submit that after the dispute arose pertaining to the parking of a car behind the petitioner on 17.10.2015, the petitioner had apologized and, therefore, that is indicative enough that the allegations, as set out in the FIR, are true and as such there is no ground made out for quashing of the FIR.

5. I have heard learned counsel for the parties and with their assistance have also perused the FIR and the document dated 18.10.2015, as relied by the learned counsel. Needless to mention here that no reply has been filed by respondent No.2/complainant.

6. The FIR, which is available on the record as Annexure P/1, does not give time and date when the petitioner is said to have behaved with the complainant in an indecent manner or when he barged into the house of the complainant without her permission. Moreover, there is a bald statement that has been made in the FIR, which reads: *“On another occasion during the assembly of residents outside the lagoon club in full public view, he came from behind and “banged on my back, and moved his hand with pressure”. He attempted to outrage my modesty. I felt very embarrassed due to his incident behaviour. Late Mr. Parsad of F block resident was witness to this incident and advised me not to precipitate the same at that moment. This incident disturbed me so much that after the above incident...”* This statement too is devoid of details as to the time and date as

to when there was assembly of residents.

7. Learned counsel for the petitioner submits that no such incident took place and no complaint whatsoever had been registered in this regard, while arguing that there is no witness to the alleged incidence. It is argued that the respondent has tried to introduce a witness, namely Parsad of F Block, who had expired as far back as 2011. The argument as raised by the learned counsel for respondent No.2 that the petitioner apologized, which would be conclusive enough to establish his guilt, is an argument which is wholly devoid of any merit. A reading of the said letter does not disclose that the petitioner had ever apologized for any incident regarding commission of any indecent act done by him. In fact, the letter addressed to respondent No. 2 by the petitioner clearly talks about the rights of the residents pertaining to common area and the facilities, while only stating that he apologized for the inconvenience caused while requesting her to unblock the car. The said letter cannot under any circumstances be construed to be an apology for any untoward incident at the behest of the petitioner. Even other communications that are available on the record *only* reflect the incident pertaining to parking of a car and not of any indecent act having been done by the petitioner. From the contents of the FIR and the documents annexed with the petition, it is apparent that the present FIR is nothing but a sheer abuse of process of law and the same deserves to be deprecated. It appears that an incident, which was related to parking issue has been given the colour of criminal offence, without there being any cogent or convincing evidence. Had any such incident taken place, as

alleged in the FIR, the complainant would have promptly made complaint in that regard to the police, but the complainant chose not to report the matter, for the reasons best known to her.

8. In **State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. 1991 (1) R.C.R. (Crl.) 383**, the Hon'ble Apex Court, in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by the Supreme Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations made in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable

offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. Consequently, keeping in view the fact that a reading of FIR does not disclose of any offence as alleged and the settled position of law in Ch. Bhajan Lal's case (Supra), FIR No. 32 dated 8.11.2015 registered under Sections 354, 354-A (1), 354-B, 506, 509 and 294 IPC at Police Station Sector 51, Gurgaon, and all subsequent proceedings arising out of the same are quashed.

The petition stands disposed of.

29.1.2020

prem

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No