

120

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

CRM-M-35604-2021

Date of decision : 15.09.2021

Naresh Kumar and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Aditya Yadav, Advocate for the petitioners.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition filed under Section 482 of Cr.P.C. is for quashing of FIR No.331 dated 10.06.2019 registered under Sections 147/149/323/506 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station City Narnaul, District Mahendergarh (Annexure P-3) and all the subsequent proceedings arising therefrom.

A perusal of the FIR would show that the present case has been registered on the complaint of Dr. S.N. Sharma, R.T.D. Civil Surgeon on the allegations that after the death of one patient Ompati, her relatives started making phone calls and they called other persons, who after reaching the Hospital, started creating turmoil and disturbance in the Hospital and they threatened to murder the Doctor and when the respectable Doctors of I.M.A.

also reached on the spot, they threatened them to go outside and on not doing the same, they beat up the said Doctors of I.M.A. and even snatched important papers from their hands and also threatened them to go. It is further alleged that the staff members have great danger to their life and property from the said persons. In the FIR, it has been stated that Haryana Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2009 is applicable to Haryana and thus, accordingly the FIR was registered. A perusal of the FIR would show that there is CCTV footage and the photographs which have been seen and considered by the ASI and the present FIR has been registered.

Learned counsel for the petitioners has submitted that in fact, the present FIR is a counter blast to FIR No.325 dated 08.06.2019 registered by petitioner No.1 against Dr. Pankaj Parashar and Dr. Raj Kumar Sharma. It is further submitted that the present FIR No.331 has been registered after a delay of 2 days. It is also submitted that in the present case, no offence under Section 147 of the IPC for rioting has been made out. Reference has also been made to Section 146 of the IPC. It is further submitted that the offence under Section 323 of the IPC is also not made out as it has not been specifically stated as to which person has been beaten up and offence under Section 506 of the IPC is also not made out as it is only an empty threat that is alleged to have been given.

This Court has heard the learned counsel for the petitioners.

A perusal of the present FIR would show that specific allegations have been made by the complainant with respect to the relatives of deceased Ompati, which even as per case of the petitioners, are the

petitioners, who had created turmoil and disturbance in the Hospital and had threatened to murder the Doctor and when the respectable Doctors of I.M.A. had reached on the spot, they even threatened them and had beaten them up and had snatched important papers from their hands. The Doctors and the staff were apprehending danger to their life and with respect to the said incident, there is also footage of CCTV cameras capturing the said occurrence. Reference to the FIR registered by the petitioners' party in fact goes against the petitioners, inasmuch as per the allegations even in the said FIR, the incident has been admitted. The cancellation report has also been submitted in the said FIR which also prima facie proves that the version given by the petitioners is incorrect. Even otherwise, it is hard to believe that the case projected by the petitioners i.e. negligence was on the part of the Doctor, the threat was also made by the Doctor and the medical papers were also not given by the Doctor and yet, on top of that the Doctor abused the petitioners and their family members. In the cancellation report submitted in FIR No.325, reference has been made to the CCTV Footage as per which the medical papers were found to have been snatched from Dr. Raj Kumar Sharma by the complainant party (present petitioners) and fist fighting with Dr. Pankaj Parashar was also seen and it was the other Doctors who were trying to save the said Doctor. It is thus found that there is no truth in the allegations made by the petitioners' side. At the time of investigating the FIR registered by the petitioners, the statements of several persons were recorded. Section 146 of IPC which deals with rioting is reproduced hereinbelow:-

“146. Rioting.

Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. ”

A perusal of the FIR as well as cancellation report (Annexure P-4) submitted in the FIR registered by the petitioners would show that prima facie force and violence had been used by the relatives of the deceased Ompati and they were found to be in an unlawful assembly, thus, offence under Section 149 IPC would stand prima facie made out.

Reference has been made to Section 323 of the IPC which talks about the punishment for voluntarily causing hurt. Voluntarily causing hurt has been defined in Section 321 of the IPC, which is reproduced hereinbelow:-

“Section 321. Voluntarily causing hurt.

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt". ”

The allegations also prima facie constitute the said offence. The argument to the effect that it has not been specifically stated as to who had given the injuries to whom, is misconceived inasmuch as the complainant and other Doctors could not have possibly known the name of the persons who were the relatives of the said Ompati. At any rate, the FIR cannot be considered to be an 'encyclopedia' giving out each and every fact. In fact, even from the document annexed by the petitioners i.e. cancellation report (Annexure P-4), it comes to surface that as per the CCTV camera

recordings, some fist blows had been given to Dr. Pankaj Parashar and the papers were snatched from Dr. Raj Kumar Sharma. At any rate, all the said facts would come about after the investigation is complete and challan is presented. Further, no authority of law has been cited by the learned counsel for the petitioners to show that FIR can be quashed on account of delay of two days.

In view of the above, the present petition is dismissed.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

Before parting, this Court must state that although, there would be a feeling of sympathy towards persons whose family member has passed away but the said persons including the petitioners must respect the Doctors who always try their best to save the lives of patients and, thus, such persons should not breach the law in case some untoward incident happens. It will be difficult for the Doctors to function in our country if they always face the threat of being beaten up or being harassed by the relatives of patients as every single day, they have to deal with situations in which life and death of a patient is involved.

15.09.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No