

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

225

CRM-M-30804-2020 (O&M)

Date of decision: 31.03.2021

Amritpal Garg @ Pappi and another

... petitioners

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Pardhuman Garg, Advocate for the petitioners.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

The hearing of the instant petition has been taken up through video conferencing due to spread of contagion.

Through the instant petition filed under section 482 of the Code of Criminal Procedure, 1973, the petitioners have sought quashing of FIR No. 94 dated 01.05.2020 lodged for offence under Sections 353, 186, 332, 506, 188, 270, IPC and Section 51 of Disaster Management Act, 2005 registered at Police Station Maur, District Bathinda, Annexure P-1, Police Report dated 26.05.2020, Annexure P-3 and all consequential proceedings arising therefrom.

Facts, in brief, are that the impugned FIR has been registered on the complaint of Lady Constable Lovepreet Kaur on the

allegation that at about 7 p.m. on 01.05.2020, when she, alongwith Constable Lovedeep Singh and Constable Sandeep Singh, were patrolling the area of Tej Ram Street, they found that the accused-petitioners were sitting in a cosmetics and grocery shop, which was open in violation of the curfew restrictions imposed due to the outbreak of corona virus. On being asked to close the shop, one of the petitioners started cursing the complainant, both the accused obstructed them in the performance of their duty, caught hold of Constable Lovedeep Singh and dragged him, tearing his uniform in the scuffle. FIR was registered at 10.37 PM on 01.05.2020 and the petitioners were arrested on 02.05.2020. They were granted bail by the Judicial Magistrate on 06.05.2020 vide order Annexure P-2. After the completion of the investigation, challan, Annexure P-3, was presented against the accused-petitioners and the charge is yet to be framed.

Counsel for the petitioners has urged that the petitioners have been falsely framed and neither the alleged occurrence took place, nor was the complainant-respondent no.2 was present on the spot. It is his contention that there is no shop in the premises of the petitioners, who are professionals and the alleged shop in question is their law office. He has argued that the FIR has been registered at the behest of Jaswinder Singh, who has been made an eye-witness, against whom FIR No. 149 dated 05.07.2018 for offence under section 295-A, IPC, Annexure P-4, which is pending trial, has been registered by petitioner no. 1. Reference has also been made to the video recording, Annexure P-5.

The petition has been opposed and separate, but similar

replies, by way of affidavit have been filed by the Deputy Superintendent of Police, Sub-Division Maur, Bhatinda, on behalf of the State-respondent no. 1; complainant-Lady Constable Lovepreet Kaur, respondent no.2 and Constable Lovedeep Singh, respondent no. 3.

I have considered the rival submissions and gone through the paper-book with the assistance of the counsel.

On the basis of the material collected and statement of the witnesses, the prosecution agency has filed the Police Report, Annexure P-3, under Sections 353, 186, 332, 506, 188, 270, IPC and Section 51 of Disaster Management Act, 2005 and the matter is pending for consideration on the framing of the charge. From reading of the complaint and the material produced, it is not possible to come to the conclusion that the ingredients of the alleged offences are not fulfilled and the offences are not made out or that the proceedings are mala fide, frivolous or vexatious. It is relevant to notice that impugned FIR has been registered on the basis of a complaint filed by a police official, who alongwith other officials, was discharging her duty and ensuring enforcement of orders passed by the Government during the Covid-19 pandemic. Instead of cooperating with the complainant and abiding by the guidelines to fight the pandemic, the petitioners allegedly assaulted an official. In such circumstances, it cannot be said that there is any abuse of process of law in registering the FIR. This being the position, there is hardly any scope for this Court to exercise jurisdiction under Section 482 of the Cr.P.C.

The petitioners have challenged the FIR by taking factual defences, which cannot be examined by this Court in exercise of its jurisdiction under section 482 of the Code. This Court is not in a position to examine the possibility of the falsity of the accusation or comment on the credibility of the alleged eye-witness or the video recording to come to any conclusion regarding the claim of the petitioners. It has been held by the Hon'ble Supreme Court that factual aspects cannot be gone into by this Court in proceedings under section 482 of the Code. Power under Section 482 of the Cr.P.C. is to be exercised in rarest of rare case and is to be used sparingly and with great circumspection.

In Umesh Kumar vs State of Andhra Pradesh and another, (2013) 10 SCC 591, the Hon'ble Supreme Court has held as under:

“The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed alongwith the petition

labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.”

Apex Court in **Gunmala Sales Private Limited and others**

V/s. Anu Mehta and others, (2015) 1 SCC 103, observed that no rowing inquiry or a mini trial is permitted in exercise of powers under Section 482 of the Cr.P.C. and therefore, even merits of the disputed facts are not to be examined. In **Dr. Lakshman vs. State of Karnataka and others**, 2019 (9) SCC 677, the Hon’ble Supreme Court held that it is not permissible for High Court to enter into the disputed area, at the stage of considering the petition filed under Section 482, Cr.P.C. and to record any finding wherever there are factual disputes. In view of the above settled legal position, no interference is possible under Section 482 of the Cr.P.C.

Petition is dismissed.

Without commenting on the factual aspects raised by the

counsel for the petitioners, it is clarified that anything said hereinabove shall not be construed to be an expression on the merits of the case and liberty is granted to the petitioners to raise all the pleas before the trial court at an appropriate stage.

31.03.2021

(SUVIR SEHGAL)

pooja saini

JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No