

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

CRM-M-16164-2018

Date of Decision:-23.09.2022

Harvinder Singh.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Parampreet Singh Paul, Advocate for the Petitioner.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Section 482 Cr.PC is for quashing of the impugned judgment dated 18.12.2017 passed by Additional Sessions Judge, SAS Nagar, Mohali (Annexure P-2) and the Judgment dated 02.06.2017 (Annexure P-3) passed by the Judicial Magistrate Ist Class, SAS Nagar, Mohali whereby Criminal Complaint No.41/2015 (Annexure P-4) under Sections 323, 148, 149, 506, 458 IPC has been dismissed.

The brief facts of the case are that complainant/petitioner Harvinder Singh filed a complaint with the allegations that on 24.5.2011 he went to pick up his son from the bus stand, sector 43, Chandigarh leaving his daughter alone in the house. When he came back along with his son he found that accused nos.2 & 3 (respondent nos.3 & 4) were using filthy language against his daughter after entering the house. He asked them to

stop disturbing the peace of their house. His daughter informed him that the accused had entered the house and she had opened the same thinking that he (complainant) and his son came back. Thereafter the accused left his house leaving behind their motor cycle at that place. After a few minutes they returned back with deadly sharp edged weapons on the motor cycle of accused no.1/respondent no.2, forcibly entered his house and attacked him and his son Bimal. On raising alarm some neighbours came to the spot and rescued them. The accused persons thereafter ran away leaving their weapons at the spot which were handed over to the police who came there.

Instead of registering an FIR against the accused persons an FIR No.63 dated 25.05.2011 under Sections 323, 324, 506, 326, 148, 149 IPC, P.S. Phase-1, Mohali came to be registered against him and he and his son were detained at the police station the whole night and were only released at 4.00 am.

Thereafter he moved an application to SSP, Mohali bearing No.374/IGP/SSP/SAS Nagar dated 22.12.2011 and the enquiry on the said application was marked to Superintendent of Police, City 2, SAS Nagar who submitted his Enquiry Report vide number 17/5C/Supdt. Police, City-2, dated 27.02.2012. Photocopy of the application and enquiry report are enclosed herewith. In the said enquiry SP City-2, Mohali sought registration of an FIR against the accused/respondents. He visited the police station a number of times to meet the senior police officials with a request to register an FIR but to no avail leading to the filing of the present complaint under Sections 323, 148, 149, 506/458 IPC.

Pursuant to the filing of the complaint, the complainant stepped into the witness box and further examined Yashpal Sharma as CW-2, his

Japjeet Kaur as CW-3 and HC Gurdev Singh as CW-4 who placed on record Ex.CW-4/A i.e. Copy of application and the conclusion report Ex.CW-4/B. Based on the evidence led, the JMIC Mohali dismissed the complaint vide order dated 2.6.2017 holding firstly that there was no medical record suggesting any injury on the person of the complainant and his son. In fact an FIR had been registered against the present complainant party for attacking the accused no.1/respondent no.2-Tableen Singh. Secondly, it was improbable that the accused persons who were armed with sharp edged weapons and 03 in number had not been able to inflict any injury on the complainant and his son and in fact it was Tableen Singh who had been injured. Thirdly, there were no specific allegations as to how the accused persons attacked the complainant party and which weapon had been used for the said attack and merely because sharp edged weapon alleged used by the accused persons were handed over to the police by the complainant did not lead to the inference that the weapons belong to the accused. Fourthly, there was no specific description as to how and from where the accused had entered forcibly in which portion of the house and, therefore, the version of the complainant did not seem plausible. Fifthly, the incident as per the complainant was of 25.05.2011 whereas the complaint in the present case had been made on 16.04.2015 after a lapse of 04 years. Sixthly, the evidence of CW-2 Yashpal Sharma also did not further the case of the complainant in any manner as to how the accused attacked the complainant and his son.

Aggrieved by the aforementioned order of dismissal of complaint, the petitioner-complainant filed a revision petition which came to be dismissed by the court of Additional Sessions Judge, SAS Nagar,

Mohali vide order dated 18.12.2017 (Annexure P-2). The learned Additional Sessions Judge came to the conclusion that there was no medical evidence on record to substantiate the allegations in the complaint and merely because a cross case had been registered against the complainant party would not be a ground to summon the accused person. The nature of weapons allegedly used in the occurrence were not described and, therefore, cumulatively the complainant had failed to make out *prima facie* case for summoning.

Against the aforementioned judgments, the present quashing petition has been filed.

The Counsel for the petitioner contends that the conclusions arrived at by the courts below are contrary to the record. Since the respondent-accused had only given simple injuries so there was no medical record with regard to the injuries received by the complainant party. The courts below had erred in coming to the conclusion that there was a delay in filing of the complaint. In fact the complainant had moved an application to the SSP, Mohali and the SP Mohali had recommended the registration of an FIR but on account of the connivance with the respondent/accused, the FIR was not registered leading to the filing of the complaint. It is contended that the evidence of CW-3 Japjeet Kaur has not been given due credence and nor has the enquiry report duly accepted by the petitioner/complainant (Ex.CW-4/B been adverted to by any of the courts below. He thus contends that the orders Annexure P-2 & P-3 are liable to be quashed and proceedings initiated against the respondent nos.2 to 4.

I have heard learned Counsel for the petitioner at length.

In the present case it is highly improbable that the

respondent/accused who were 03 in number had attacked the petitioner/complainant and his son with deadly sharp edged weapons but did not inflict any injury upon them and instead one of the accused namely Tableen Singh himself received grievous injuries. There is no MLR either of the petitioner or his son available on record which suggest that the allegations in the complaint are baseless. Further, there is no description as to how and in what manner the respondent/accused were able to forcibly enter the house of the complainant party. CW-2 Yashpal Sharma has also not specifically mentioned as to how the occurrence took place and a part of his evidence is actually hearsay evidence and, therefore, cannot be relied upon. Further the occurrence is said to have taken place on 25.05.2011 and the complaint in question came to be filed on 16.04.2015. The explanation furnished by the complainant that he was under the impression that an FIR would be registered based on his complaint cannot be accepted.

In view of the aforementioned discussion, I find no merit in the present petition and the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

September 23, 2022

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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>