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

CRM-M-30817-2017
DECIDED ON: 31.08.2022

MOHIT AGGARWAL AND OTHERS

....PETITIONERS

VERSUS

STATE OF HARYANA AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. G.K. Maan, Sr. Advocate with
Mr. Gursewak Singh and Mr. Gursharan Singh, Advocates
for the petitioners.

Mr. Surender Singh, AAG, Haryana.

SANDEEP MOUDGIL, J.

In the instant petition, jurisdiction of this Court under Section 482 Cr.P.C., has been invoked seeking to quash the FIR No.0310, dated 15.07.2017, under Section 160 of the IPC, registered at Police Station Sector 40, District Gurgaon with all consequential proceedings arising therefrom.

2. The prosecution story as unfolded before this Court is that on 15.07.2017, the petitioners were going to home after their duty hours and for that purpose booked Uber Cab. It was during the wait for the Uber Cab to reach, two constables, who were in drunkard condition, came on motorcycle and approached them, who started misbehaving for no reason.

3. When the petitioners asked the Police officials to go away telling them that they are waiting for the Uber Cab, both the constables on the top of

their voice shouted at the petitioners using dirty and filthy language with full aggression. Faced with the situation, petitioner No.1 started making a video of police officials indecent behaviour. On observing that the incident is being videographed, the police officials got offended and forcibly took the petitioner to police station, apart from seizing their belongings. The mobile phone of petitioner No.1 was snatched, who was given beatings, causing fracture in the finger and rib. The police officials deleted the captured video from the mobile phone of petitioner No.1 and got panicked on seeing the petitioner No.1 in severe pain, having suffered injuries, got registered the present FIR on total concoction with baseless allegations having no iota of truth in it.

4. The State of Haryana was called upon by issuing notice of motion on 23.08.2017 and in the meantime vide order dated 16.07.2019, the complainant Constable Attar Singh was arrayed as respondent No.2 in the memo of parties. In response thereto, a reply dated 22.04.2018, by way of an affidavit of Inderjeet, HPS, Assistant Commissioner of Police, Sadar, Gurugram was filed on behalf of the State of Haryana, which was taken on record. according to which the petitioners were scuffling and hitting each other and were creating disturbance at public place, while in drunken position. The relevant para of preliminary submissions are reproduced herein below:-

2. That the brief facts of the case are that the petitioners were scuffling and hitting each other and they were creating disturbance at public place and they were also drunk. Thereupon, HC Anil Kumar along with Constable visited the spot near Royal Green Wine Shop and the FIR

no. 310 dated 15.07.2017 was registered against the petitioners u/s 160 IPC at PS Sector-40, Gurugram. During the course of investigation, the petitioners were arrested on 15.07.2017 from the occurrence place. After completing the investigation, the challan against the petitioner has been submitted in the court of Ld. Illaqa Magistrate, Gurugram on 27.07.2017. Now, the trial is pending in the court of Ld. JMIC, Gurugram and is fixed on 10.05.2018 for argument on charge.

5. Reply dated 14.12.2019, by way of an affidavit of EHC Attar Singh, Police Lines, Gurugram on behalf of respondent No.2, has been filed separately and the same is also taken on record. The relevant para of preliminary submissions from the said reply, are reproduced herein below:-

“2. That the brief facts of the case are that on 14.07.2017 the answering respondent, along with Ct. Rajender were on night patrolling duty and when they reached Royal Green Wine Shop in the area of P.S. Sector-40, Gurugram, they saw that the petitioners were scuffling and hitting each other and they were creating disturbance at the said place, which is a public place. The said persons were also drunk. The answering respondent with the assistance of Ct. Rajender tried to stop them but they did not pay any heed and they continued to scuffle. Upon this, the answering respondent called the other police officials at the occurrence place through phone. Thereupon, HC Anil Kumar, along with

other police officials, reached the spot and overpowered them with great efforts. The smell of liquor was coming out from their mouth. On asking, the said persons told their names as Mohit Agarwal, Naman Sharma and Rahool Sureka. An application in the shape of complaint regarding the incident was submitted by the answering respondent to HC Anil Kumar. On the basis of said complaint FIR no. 310 dated 15.07.2017 was registered against the petitioners u/s 160 IPC at PS Sector-40, Gurugram and the investigation of the case was conducted by HC Anil Kumar P.S. Sector-40, Gurugram.”

6. Learned counsel for the petitioners contends that the complainant is a police officer, as such the police was completely biased against the petitioners. When petitioner No.1 was crying in pain, was not taken to the hospital by the police and after his medical check-up, got done at Paras Hospital, his finger and rib were found to be broken. He also contends that the petitioners, who were working in private sector, were going home after hiring cab on 15.07.2017 and the aforesaid FIR was registered against the petitioners with the allegations that they were scuffling and beating each other. He further contends that a perusal of the FIR reveals that there is no allegation against the petitioners that they were creating disturbance at the public place. It has been submitted by the learned counsel for the petitioners that one of the petitioner was beaten and tortured by the police, when he was in custody and another namely Mohit also received injuries, who was treated in private hospital. He has asserted that the petitioners had also lodged a

complaint in the Commissioner's office on 17.07.2017, but the Commissioner has also not taken any action. Learned counsel for the petitioners has also placed reliance upon a judgment of Madras High Court in case titled as '*Muthulakshmi Versus State of Tamil Nadhu*', 1994(2) CCR 892, wherein in similar circumstances, FIR and its proceedings were quashed.

7. Learned counsel appearing for the State has submitted that the reply of State as well as respondent No.2 are already on record, which contained the facts of the present case and prays for dismissal of the present petition.

8. I have heard the learned counsel for both the sides and also gone through the record of the case and this Court is of the considered view that the present petition is liable to be allowed for the reason that the petitioners appeared to be falsely implicated in the present case because according to the receipt (Annexure P-1), the petitioners had booked Uber Cab to go home after their duty hours and the alleged incident took place thereafter, while they were waiting for cab. According to the allegation in the FIR against the petitioners being in drunkard condition, no evidence to that effect has been adduced as admittedly no medical examination upon the petitioners was got conducted. In fact it is the case of the petitioners that two police officials including the complainant in drunken condition came to them when they were waiting for their Uber Cab at mid-night i.e. 12:16 A.M. The said police officials abused and used filthy language against the petitioners. It was at this juncture when the petitioner No.1-Mohit Aggarwal started making a video of their indecent behaviour, which was not liked by the complainant and his colleague, resulted into lodging of the present FIR, which prima facie is false having no iota of cogent evidence against the petitioners and

resultantly this Court hold that the petitioners have been falsely implicated in the present case. Another fact which has also weighed in the mind of this Court are the photographs showing injuries suffered by petitioner No.1-Mohit Aggarwal as Annexure P-4, have not been denied at all. Actually in the reply of the respondents, rather acceptance is coming on record on the part of respondent No.2-complainant, who failed to negate this fact by any evidence whatsoever.

9. In view of the discussion made hereinabove and after perusal of the record, the present petition is, therefore, accepted and FIR No.310, dated 15.07.2017, under Section 160 of the IPC, registered at Police Station Sector 40, District Gurugram is quashed.

10. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

31.08.2022

Poonam Negi

Whether speaking/reasoned: *Yes/No*

Whether reportable: *Yes/No*