

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

**CRM-M-41012 of 2021
DECIDED ON:15th February, 2022**

Jagdish

.....PETITIONER

VERSUS

State of Haryana and another

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Ashwani Nagra, Advocate for petitioner.

Ms. Dimple Jain, AAG Haryana.

AVNEESH JHINGAN, J (ORAL)

Due to COVID-19 situation, the Court is convened through video conference.

This petition under Section 482 Cr.P.C. is filed for quashing of FIR No. 472 dated 26.9.2018, under Sections 307, 341, 379, 323 read with Section 34 IPC, 1860 and Section 25 of Arms Act, 1959, registered at Police Station Urban Estate, Rohtak, District Rohtak along with all consequential proceedings arising therefrom.

FIR No. 472 dated 26.9.20218 was registered at the instance of Sanjeev Yadav. The complainant was running business of giving Shuttering and Godown on rent. As per the allegations, on 26.9.2018, he was driving his Jeep bearing registration No.DL-9CS-9999, near Goyal Petrol Pump on Rohtak-Delhi Road, one white coloured swift car came from behind and two occupants sitting in the car alighted. One of the person Jagdish was known to the complainant. The other person caught hold of the neck of the complainant and Jagdish fired three shots towards the complainant but the aim missed. The accused fled from the spot. It was further alleged that two years back there was an altercation between the complainant and Jagdish, the incident was fallout of that occurrence.

Learned counsel for the petitioner submits that the present FIR is a counter blast to FIR No. 150 dated 1.5.2018, under Section 448, 380, 323, 509, 506 read with Section 34 IPC, registered at Police Station Moti Nagar, District West Delhi. The FIR was registered at the instance of Usha wife of Jagdish, alleging that she was beaten, misbehaved with and due to business dispute the possession of the shop of her husband and her Mercedes Car was taken by Sanjay Yadav.

Learned State counsel opposes the prayer and submits that the matter is under investigation. The petitioner was granted interim anticipatory bail by this Court, though he joined the investigation but never cooperated as a result vide order dated 31.8.2021, the interim anticipatory bail was cancelled. The petitioner is absconding.

It is a trite law that power under Section 482 Cr.P.C. for quashing of criminal proceedings is to be used sparingly and that too in rarest of rare cases. Supreme Court in **Haridaya Ranjan Pd. Verma and others v. State of Bihar and another, 2000(4) SCC 168** considering its decision in **State of Haryana v. Bhajan Lal, 1991(1) RCR (Crl.) 383** held as under:

*“8. In the case of **State of Haryana and Others v. Bhajan Lal and Others, [1992] Supp. 1 SCC 335**, this Court in the back drop of interpretation of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the 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, making it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercise :*

(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 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. In the decision this Court added a note of caution to the effect that the power of quashing a criminal proceeding should be exercised 'very sparingly and with circumspection and that too in the rarest of rare cases'.

10. The principles laid down in this decision have been followed in several decisions of this Court like [1995] 5 SCC 194 Rupan Deal Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another, [1999] 3 SCC 259; Rajesh Bajaj v. State NCT of Delhi and others, [1992] 2 SCC 651; State of Kerala and others v. O.C. Kuttan and others, [1996] 9 SCC 1 and P.S. Rajya v. State of Bihar, [1996] 2 SCC 194 State of Orissa v. Bansidhar Singh.

11. The question is whether the case of the appellants comes under any of the categories enumerated in State of Haryana and others v. Bhajan Lal and others (supra) ? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety do not make out a case against the accused? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the complaint.”

In the present case, Section 307 IPC is invoked. Three shots were fired by the petitioner towards the complainant. As per the State counsel, three empty shells were recovered. With non-cooperation and avoiding arrest, the petitioner has been successful in delaying the investigation. The case is still at investigation stage. Arguments raised are based upon disputed questions of facts. There are allegations of a cognizable offence being committed on 26.9.2018 by the petitioner. There are two FIRs with regard to two different incidents. It may be clarified at this stage that relations between the two incidents, if any, would be subject matter of the investigation and trial.

No case is made out for interference under Section 482 Cr.P.C. especially when the matter is being investigated.

The petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

15th February, 2022
reema

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>