

(264) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46912-2019
Date of Decision: 27.09.2022

BINDER KUMAR

... Petitioner

Versus

AKSHAY MAHANT & ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Gourav Jain, Advocate for the petitioner.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for setting aside the order dated 30.08.2018 (Annexure P-4) passed by the learned Additional Sessions Judge, Sirsa passed in CRR No.125 of 2017 titled as Binder Kumar Versus Akshay Mahant & Another filed by the petitioner/complainant against the order dated 23.02.2017 (Annexure P-2) passed by the learned Judicial Magistrate, 1st Class, Sirsa, whereby the Criminal Complaint No.47-1 of 2012/2016 titled as Binder Kumar Versus Akshay Mahant and Another has been dismissed.

2. The brief facts of the case are that on 03.04.2012 at about 05.30 AM the complainant and his mother were sleeping on the roof of their house. At that time the accused No.1/respondent No.1 started abusing the complainant by coming to the roof of the complainant. The accused No.1/respondent No.1 threw a flowerpot which was kept on the joint wall of their roof to cause physical harm to the complainant. The complainant along with his mother came on to the ground floor. The accused No.1/respondent

No.1 came in front of the house of complainant armed with a Danda and tried to break the door of his house and also gave filthy abuses to them. At that time the accused No.2/respondent No.2 who is mother of the accused No.1 was also accompanying him and both of them also threatened them with dire consequences. In this regard the complainant moved an application to the police post HUDA, Sector 20 Sirsa on 03.04.2012 and on his application a case under Section 107/151 of Cr.P.C. was registered against accused No.1/respondent No.1. Thereafter, the complainant moved an application to SSP, Sirsa for investigation but to no effect. On 10.04.2012 at about 09.30 PM, the accused persons threatened the complainant, his sister and his mother with dire consequences of murder by entering into their house. The accused No.1/respondent No.1 was stated to be having criminal antecedents and was an under-trial in many cases at Sirsa and Chandigarh. He kept weapons and also indulged in the sale and purchase of intoxicating materials. On these allegations the complaint came to be filed under Sections 451, 452, 453, 504, 506 IPC.

3. In preliminary evidence, the complainant examined himself as PW-3 and also examined HC Satevir as PW-1, HC Sita Ram as PW2 and Suman Bala as PW-4. Thereafter, the preliminary evidence was closed vide his separate statement recorded on 12.09.2016. However, on 07.06.2014 an application under Section 311 Cr.P.C. seeking permission to adduce additional evidence was moved and the same was allowed on the same date. Thereafter, the complainant also examined Krishan Lal, Record Keeper as PW-5, Shamsher Singh Malik as PW-6, Veena Rani as PW-7 and Shiv Shanker

Record Keeper as PW-9 in additional evidence. The complainant closed his preliminary evidence after tendering a number of documents

4. After examining the entire evidence on record, the Court firstly came to the conclusion that the complaint had been filed after a long delay of about 04 months since the incident pertained to 03.04.2012 and the complaint was filed on 01.08.2012. The report under Section 202 Cr.P.C. submitted by the police also found the allegations of the complainant to be false. In fact, no motive was ascribed in the complaint for the alleged conduct of the accused and merely because Akshay Mahant/respondent/accused had some cases registered against him would not be a ground to presume that he had committed an offence in the present case. Thus, the complaint came to be dismissed by the Court of Judicial Magistrate, 1st Class, Sirsa vide order dated 23.02.2017 (Annexure P-2).

Against the said order, a revision was preferred before the Court of learned Additional Sessions Judge, Sirsa. The said Court came to the conclusion that no offence under Section 451 IPC was made out as no injury had been received by the complainant during the course of the incident. There was no evidence that an offence under Section 452 IPC or Section 453 IPC was made out from the reading of the complaint and the attending circumstances. Similarly, no offence under Section 504 IPC was made out on account of the fact that it could not be ascertained that abusing *per se* would amount to an intention to provoke the complainant to breach public peace. Further, the allegations of threatening to kill the complainant were also vague and general. Therefore, the revision petition also came to be dismissed vide order dated 30.08.2018 (Annexure P-4).

It is these two orders dated 30.08.2018 (Annexure P-4) and 23.02.2017 (Annexure P-2) which are impugned in the present petition.

5. The learned counsel for the petitioner/complainant contends that the Courts below did not examine the evidence in its proper perspective including the statements of different witnesses. It was wrongly held that the complaint had been filed after a gap of 04 months. In fact, the petitioner was diligently availing his legal remedies in accordance with law and under the provisions of Section 468 Cr.P.C., the complaint of the petitioner was within limitation. He contends that the accused No.1/respondent No.1 had criminal antecedents and in fact, the petitioner and his family members faced threats to their life. The report under Section 202 Cr.P.C. could not be relied upon to exonerate the accused and has pointed out to certain flaws in the statements of witnesses recorded during the course of said inquiry to contend that it has been manipulated by the Investigating Agency at the instance of the answering respondents. He further contends that the findings arrived at by the learned Additional Sessions Judge, Sirsa with respect to no offence having been committed under Sections 451, 452 and 453 IPC are also erroneous. It is thus, contended that the impugned orders be quashed and the matter be remanded back to the Magistrate for a fresh adjudication on merits.

6. I have heard the learned counsel for the petitioner at length.

7. First, as per the case of the complainant, the incident took place on 03.04.2012 and the second incident on 10.04.2022. The criminal complaint came to be instituted only on 01.08.2012 under Sections 451, 452, 453, 504, 506 IPC. It may be pertinent to mention here that there is a delay of more 3 ½ months in the filing of the complaint which gives rise to suspicion as to the

case of the complaint. In fact, proceedings under Section 107/151 Cr.P.C. had already been initiated after the first incident which also shows that the Investigating Agency was proceeding fairly and in accordance with law.

So far as the offence under Section 451 IPC is concerned, it may be pointed out that except for the bald allegations as levelled by the complainant, there is absolutely no evidence that trespass actually took place. In fact, no injury was received by the complainant during the course of the incident which creates a serious doubt in the case of the prosecution. Similarly, Section 452 IPC is also not made out because there is nothing to suggest that any preparation for causing hurt or assault was made by the accused No.1/respondent No.1 before such trespass. The complainant was also not restrained in any manner before such house trespass allegedly took place. Therefore, no offence would be made out under Section 452 IPC. Consequently, no offence under Section 453 IPC would also be made out. So far as the allegations of an offence under Sections 504 and 506 IPC are concerned, it may be pointed out that such kind of allegations are very easy to level against any party. Even otherwise, proceedings under Sections 107/151 Cr.P.C. had been initiated regarding the altercation said to have taken place.

8. In view of the above, I find no merit in the present petition and therefore the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

27.09.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No