

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

**CRM-M-57853-2022**

**Date of decision : 13.12.2022**

**AYUSH SAXENA**

....Petitioner

Versus

**STATE OF HARYANA AND ANOTHER**

...Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Manoj Kaushik, Advocate  
for the petitioner.

**PANKAJ JAIN, J. (ORAL)**

Present petition has been filed under Section 482 Cr.P.C. seeking quashing of case FIR No.257 dated 29<sup>th</sup> of April, 2018 registered for the offence punishable under Sections 186, 323, 332, 353, 506 IPC, registered at Police Station Sushant Lok, District Gurugram, Final Report under Section 173 Cr.P.C., dated 3<sup>rd</sup> of December, 2018 and order dated 2<sup>nd</sup> of March, 2022.

2. Petitioner was booked for in FIR No.257 dated 29<sup>th</sup> of April, 2018 which reads as under :-

“It is requested that today in the night of 28/29-04-2018 I-ASI Ramjas, Belt No.: 1117/GGM; alongwith other colleagues Z.O's Ved Mitar-EASI- Belt No.:1095& ASI Kaptan Singh-1335 & Traffic Police employees were checking vehicles at American Express Gold course road. During the course of checking when I by stopping the Car Belleno bearing RC No; DL 90CAE-5977 asked the driver of the car to breath in Alcohol meter and upon checking, it revealed that the driver fo the car has consumed the

liquor. Upon enquiry the Driver disclosed his name as Ayush Saxena s/o Sushil Parkash Saxena, R/o House No. 664, Princess Park, Plot No. 33, Dwarka, Sector-6, Delhi. When I asked him to show License and other documents of the vehicle, then he started abusing with me, I again asked him to show documents then he got angry and hold me from my neck and pulled band-Collar of my shirt. During this period my colleagues employee ZO EASI Ved Mittar & ASI Kaptan Singh-1335 tried to rescue me, then he started combating with us and abusing with us, he threatened us; if we ask him to show documents then he will kill by rolling car upon us. The abovesaid accused Ayush Saxena by disturbing official duty has beaten me and has threatened me with dire consequences. It is requested that legal action be taken against abovesaid accused. Prior to handing over you the accused Ayush to you, his car has been impounded.

3. Petitioner earlier approached this Court by way of CRM-M-24709 of 2019 seeking quashing of FIR which was dismissed as withdrawn with liberty to raise all issues at the stage of framing of charges. Order dated 28<sup>th</sup> of May, 2019 reads as under :-

“After arguing for some time, learned counsel for the petitioner wishes to withdraw the present petition with liberty to raise all these issues at the stage of framing of charges.

The prayer is accepted.

The petition is ordered to be dismissed as withdrawn with liberty as aforesaid.”

4. At the time of framing of charges, application was moved by the petitioner which is placed on record as Annexure P-4 and the same stands dismissed vide impugned order dated 2<sup>nd</sup> of March, 2022 appended as Annexure P-5.

5. Ld. Counsel for the petitioner vehemently argued that in fact it

is a case of exercise of blatant power by the police authorities despite there being no evidence, the petitioner was involved in drunken driving and was asked to pay fine. Even report under Section 173(2) Cr.P.C. is bereft of any evidence to said effect. He, thus, submits that there being no evidence on record collected during the course of investigation to corroborate the allegation against the petitioner, present proceedings cannot be sustained.

6. I have heard Ld. Counsel for the petitioner and have gone through the records of the case.

7. Admittedly, the petitioner was not fined for drunken driving, the present FIR has been registered for offences punishable under Sections 186, 332, 353 IPC and the petitioner has been charged for the same. The issue as to whether the petitioner was drunken on the fateful day or not has no bearing on the offences for which the petitioner has been charged. The test w.r.t. stage of charge is more than *prima facie* case as laid down by Apex Court in '**State of M.P. vs. Laxmi Narayan and Ors., 2019(5) SCC 688**'.

8. After perusing the impugned order, this Court is satisfied that Trial Court has gone through the evidence collected against the petitioner and rightfully charged him at this stage while recording finding to the following effect :

“In backdrop of the above, perusal of file shows that there is a *prima facie* case existing against the accused. The police has investigated the matter and submitted a charge-sheet including the medical reports of the complainant as well as challan issued on the spot to the accused, which is not even disputed and rather

the same has been admitted and confessed by the accused and even paid for. Prima facie it appears that accused was present on the spot, therefore, no reasonable ground is made out for discharge of accused. Contentions raised regarding not being drunk, or being innocent are matter of trial for which accused will be given opportunity at the appropriate stage. It is settled law that at the time of framing of charges defence of the accused cannot be considered and even documents relied upon by the accused cannot be looked into as only charge-sheet has to be primarily considered. The authorities relied upon by the counsel pertain to inherent powers of the Court under Section 482 Cr.P.C. whereas this Court is not vested with any inherent power or jurisdiction under Section 482 Cr.P.C. and the application at hand has been filed under Section 239 Cr.P.C. as such.”

9. In view of the aforesaid facts, no fault can be found with the impugned order whereby the petitioner has been charged for the offences punishable under Sections 186, 332, 353 IPC.

10. Consequently, the present petition is dismissed.

11. Needless to say that anything observed herein shall not be construed to be an expression of opinion on the merits of the case.

**December 13, 2022**

**Dpr**

**(PANKAJ JAIN)**

**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No