

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 119

CRM-M-9697-2023

Date of decision : 23.02.2023

Pasamvir

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Manish Soni, Advocate, for the petitioner.

Mr.Viney Phogat, DAG, Haryana.

DEEPAK SIBAL, J. (ORAL)

Through the present petition filed under Section 482 Cr.P.C. the petitioner seeks quashing of order dated 18.08.2022 passed by the Judicial Magistrate Ist Class, Pataudi (for short, the Magistrate) through which the petitioner's complaint, filed by him against the private respondents, has been dismissed. Also under challenge is the order dated 03.02.2023, passed by the Additional Sessions Judge, Gurugram (for short, the revisional court) through which the petitioner's revision petition, filed by him against the aforesaid order of the Magistrate, was rejected.

The petitioner filed a complaint before the Magistrate through which he alleged pending disputes between the petitioner and his family on one side and the private respondents on the other; on 24.11.2017 the private respondents had trespassed into the petitioner's house; at the time of such trespass Sampuran and respondent No.2-Sandeep were armed with lathis; respondent No.3-Sanjeev was armed with a knife; respondent No.4-Narender was armed with a daangi; respondent No.5-Sunil was armed with a sword and respondent No.5-Rajni was carrying bricks in her hands; thereafter, all the aforesaid persons caused injuries to the petitioner and his family members; Sunil who was armed

with a sword caused severance of the petitioner's little finger and that thereafter all the aforesaid persons fled the scene.

Preliminary evidence was recorded by the Magistrate in the course of which the petitioner, his son-Sanjeev and the doctor, who had attended to the petitioner, were examined as CW-1, CW-2 and CW-3 respectively. The Magistrate dismissed the petitioner's complaint as he found material contradictions between the contents of the petitioner's complaint and the preliminary evidence. The Magistrate found that in his complaint the petitioner had stated that it was Sunil who had caused the injury to his finger with his sword whereas before the Magistrate the petitioner and his son both stated that it was not Sunil but Narender who had caused the aforesaid injury with a daangi. The Magistrate further found no medical evidence to support the allegations by the petitioner with regard to the beatings given by the accused persons to his son and other female members of his family. The Magistrate further disbelieved the petitioner on the ground that no independent witness had been examined by the petitioner especially when in his complaint he had stated that at the time of the incident several persons from the locality had gathered at the spot. The Magistrate found all other injuries on the petitioner's person, other than the injury on his little finger, to be superficial in nature. The Magistrate was also of the opinion that since the petitioner was facing prosecution for having murdered Sampuran it could not be ruled out that he had lodged the complaint only to pressurise the private respondents as Sampuran was the father of respondents No.2 to 4 and respondent No.5 was his wife.

The revisional court found no illegality or perversity in the order of the Magistrate and therefore dismissed the petitioner's revision.

It is in the afore circumstances that the present petition has been preferred before this Court for the aforesaid reliefs.

Learned counsel for the petitioner submits that there was only a slight contradiction in the case set up by the petitioner in his complaint and in his statement made before the Magistrate; the petitioner's injuries which include severance of his finger were duly proved before the Magistrate through the testimony of the doctor who had attended to the petitioner and that the petitioner's son and his other female family members had also received injuries but because they were all accused in a murder case they did not go to a doctor for treatment and resultantly, in their case there was no MLR.

On 24.11.2017 FIR No.349 under Sections 323, 341, 302 IPC (Sections 148, 149, 120-B and 506 IPC deleted) and Section 25 of the Arms Act, 1959 at Police Station Farrukhnagar, District Gurugram was registered against the petitioner and his family members. Through such FIR the petitioner and his co-accused were alleged to have murdered Sampuran. The said FIR was registered at 1700 hours on 24.11.2017. It is thereafter that the petitioner complained of the injury having been received by him at the hands of Sampuran and the private respondents who are his children and wife.

In his complaint filed before the Magistrate the petitioner specifically alleges that it was Sunil who had cut the petitioner's finger with a sword whereas while appearing before the Magistrate as CW-1 he stated that the injury on his finger had been caused by Narender. The petitioner's son-Sanjeev who appeared before the Magistrate as CW-2 also stated that the injury on his father was caused by Narender.

The afore material contradiction between the allegations made in the complaint and the statements made before the Magistrate cannot be reconciled.

The petitioner has alleged in his complaint that not only him but his son-Sanjeev and other female members of his family were also given severe beatings by Sampuran and respondents No.2 to 5. However, no MLR of his son

or other female members of his family has seen the light of the day. The explanation given for the absence of the MLRs of the petitioner's son and other female members of his family that they were on the run as they were all accused of having murdered Sampuran is unacceptable because the petitioner was also an accused in that murder and if he could get himself medically treated so could the others.

The specific case set up by the petitioner in his complaint is that at the time of the alleged incident Sampuran and respondents No.2 to 5 fled the scene as his neighbours had gathered on the spot. However, no such neighbour or any other independent witness has been examined by the petitioner.

A perusal of the order passed by the Magistrate reveals that during the course of the petitioner's examination a question was posed by the Magistrate to the petitioner as to how his finger was cut. In response to such question the petitioner stated that this was in the course of saving himself from the daangi blow which was sought to be given towards his neck. On considering the response of the petitioner the Magistrate was of the opinion that the same was not trustworthy as with a blow by a daangi of the nature as stated by the petitioner there was bound to be more damage than cut to the petitioner's finger.

In the facts of the present case, the opinion of the Magistrate is found to be reasonable.

In the light of the afore discussion, the concurrent findings returned by the Magistrate as also the revisional court warrant no interference by this court in the exercise of its jurisdiction under Section 482 Cr.P.C.

Dismissed.

23.02.2023

shamsher

Whether speaking/reasoned

Whether reportable

:

:

Yes / No

Yes / No

[DEEPAK SIBAL]

JUDGE