

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-13862-2016 (O&M)
Date of Decision:18.04.2023

Daljit Singh and Another
Vs.
State of Punjab and Another

.....Petitioners

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Amrita Nagpal, Advocate
for the petitioners.

Mr. Randeep Singh Khaira, DAG, Punjab.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of F.I.R. No.159 dated 17.12.2008 registered at Police Station Mehna under Sections 452, 323, 506/34 of the IPC (Annexure P-1), summoning order dated 12.08.2015 (Annexure P-6) and all subsequent proceedings.

2. It is contended that Bakhtour Singh, the husband of respondent No.2 used to work in Nepal with one Purva Anchal Auto Engineering. In the year 2003-04 he visited DSB Industries of the petitioners for getting his machines repaired. On 18.06.2004 said Bakhtour Singh died of heart attack in Nepal and his body was transported to India with the help provided by the petitioners. However claim petition was filed by respondent No.2 claiming compensation from the firm of the petitioners on account of death of her husband Bakhtour Singh by alleging that he was the employee of DSB

industries. The said petition was allowed by the Labour Court on 18.02.2008, against which petitioners filed an appeal before this Court and the Court was pleased to issue notice to respondent No.2 for 19.08.2008.

3. It is contended that petitioners along with their servant Satpal and the process server of the Court had gone to the Village Bohana for serving the summons on respondent No.2. The two petitioners waited outside the village whereas their servant Satpal accompanied the process server to the house of respondent No.2, who refused to receive the summons and so fixation was done at the wall of her house. However, respondent No.2 made a complaint to the police alleging that petitioners had entered her house, had given beatings to her and had threatened her. Investigation was carried out by the DSP, Moga. Both the parties were called and their statements were recorded. Complaint was found to be false as per report dated 20.04.2008 of DSP, Moga. However respondent No.2 made an application to SDM, Moga who directed Tehsildar to look into the matter. After necessary inquiry by the Tehsildar and on the basis of his report, FIR was registered. Matter was again investigation by DSP, Moga who recommended the cancellation report. Petitioner No.1 had earlier filed quashing petition bearing No.CRM-M-1230-2009 titled as 'Daljit Singh Vs. State of Punjab & Other', which was disposed of having become infructuous as the police had filed cancellation report.

However despite filing of the cancellation report, Learned Judicial

Magistrate 1st Class, Moga vide order dated 12.08.2015 directed the summoning of the petitioners.

4. It is contended that FIR is nothing but sheer misuse of process of law; that no offence is made out; that during earlier investigation the allegations were found to be false and so FIR be quashed.

5. Perusal of the impugned order dated 12.08.2015 (Annexure P-6) reveals that after receiving the cancellation report, respondent No.2 opposed the same and made statement before the Court on 17.04.2015. Magistrate further found that prima facie the two accused-petitioners had entered the house of the complainant, threatened her and caused injuries. Cancellation report was rejected and summoning of the petitioners to face trial under Sections 452, 323, 506 read with Section 34 of the IPC was altered.

6. Learned counsel for the petitioners has relied upon ***Harinder Pal Singh v. State of Punjab 2004(2) R.C.R.(Criminal) 307***, wherein police re-investigated the matter twice on the order of the Special Judge. The Judge did not agree with the police report and ordered re-investigation. Setting aside the order, it was held by this Court that the Judge could not order re-investigation for the 3rd time, though he could have taken cognizance under Section 190(1)(c) Cr.P.C. Further reliance is placed upon ***Prithvi Raj Sehgal v. State of Punjab 2007(3) R.C.R.(Criminal) 438*** wherein it was held that though

Magistrate can reject the cancellation report and order further

investigation for valid reasons but cannot order re-investigation simply on the ground that complainant was not satisfied with the investigation, as it is not the complainant but the Court, which is to be satisfied about the investigation conducted by the police. It was held further that if the Magistrate is of the opinion that sufficient material against the accused is available on record, he can take cognizance of the offence under Section 190(1) Cr.P.C., though time and again he cannot order re-investigation.

7. None of the above-cited authorities support the case of the petitioners. Learned Magistrate, by way of the impugned order (Annexure P-6) has not ordered re-investigation and rather has taken the cognizance himself and has ordered the summoning of the accused-petitioner to face trial. Further the impugned order has been passed not simply on the statement of the complainant that she was not satisfied and rather after recording her statement and after forming a opinion that prima facie there was material to summon the petitioners to face trial. In view of the aforesaid circumstances, it is held that there is no justification to quash the FIR or the impugned summoning order.

8. Therefore, this petition is hereby dismissed. However it is made clear that petitioners will be at liberty to take pleas raised in this petition in their defence during the trial.

April 18, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No