

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14177-2021

Date of Decision: 15.02.2023

Ajay Jain & Anr.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Vipin Mahajan, Advocate for the petitioners

Mr. Mohit Chaudhary, AAG Punjab

Mr. Tarunveer Vashisht, Advocate and

Mr. Brijeshwar Vashisht, Advocate for respondent No.2

Sandeep Moudgil, J.

The petitioners, *inter alia*, seek quashing of the FIR No.177 dated 06.09.2017 under Sections 302/201/323/148/149 IPC registered at Police Station Civil Lines Batala, Police District Batala (Annexure P7) qua the petitioners along with all consequential proceedings arising therefrom, with a further direction to submit the status report in the case. Further a direction is sought restraining the investigating agency from filing the final report under Section 173 CrPC of enquiry/investigation pursuant to representation (Annexure P13).

Learned counsel for the petitioners submits that respondent No.2 and his father was having some dispute regarding money transaction in the business with Sandeep Jain and Pardeep Jain, both sons of Chakreshwar Jain and an FIR No.25 dated 25.01.2013 under Sections 420/506/120-B IPC was registered on the statement of Vinod Goel – father of respondent No.2. Subsequently, Shallu Jain wife of Sandeep Jain and Arun Lata mother of

Sandeep Jain were also made accused and all of them are facing trial. It is further submitted that on 17.11.2015, the accused persons in FIR No.25 dated 25.01.2013 had come to Batala Court, however, outside court premises, some dispute arose between Sandeep Jain and Vinod Goel – father of respondent No.2 and as such, Vinod Goel suffered one injury. As per MLR (Annexure P2) conducted on the same very day, Vinod Goel suffered no external injury. No complaint was made to the police by the said injured Vinod Goel regarding the alleged occurrence of 17.11.2015. After a gap of almost six months, Vinod Goel filed criminal complaint under Sections 307/323/342/506/148/149/120-B IPC against Sandeep Jain, Shallu Jain and Arun Ltaala alleging that accused Sandeep Jain on 17.11.2015 had tried to strangle him by putting a metallic wire around his neck.

Thereafter, the respondent No.2 also managed to get the present FIR No.177 dated 06.09.2017 on the same set of allegation but against unidentified persons. Respondent No.2 Sunny Goel got his supplementary statement recorded on 03.01.2018 identifying petitioner No.1 who is *saala* of Sandeep Jain and petitioner No.2 Anil Jain who is *jija* of Sandeep Jain.

Learned counsel further averred that on 09.10.2018, the said Vinod Goel father of respondent No.2 died a natural death. No postmortem was got conducted on him and under political pressure, the respondent No.2 managed to get the offences under Sections 302/201 IPC added in the FIR No.177 dated 06.09.2017. Resultantly, the petitioners were nominated as accused in the FIR to whom anticipatory bail was granted by the trial court on 28.10.2020 (Annexure P11).

Counsel for the petitioner urged that the police has misused their powers for extraneous consideration to favour respondent No.2 to compel Sandeep Jain to entered into compromise in FIR No.25 dated 25.01.2013 whereas in the said FIR, the petitioners have no role whatsoever.

Learned counsel for the petitioner contended that the petitioners were not named in the FIR nor in the statement made by respondent No.2 in Court. The criminal proceedings against the petitioner is nothing but an abuse of process of law. It is further contended that the father of the respondent No.2 lodged a complaint which took place on 17.11.2015 in which he allegedly suffered simple injuries which fact is duly corroborates in the MLR (Annexure P2). In the said complaint also, no role has been assigned nor there is any whisper against the petitioners.

It is further averred that the present FIR i.e. FIR No.177 dated 06.09.2017 was also got registered regarding the same occurrence which allegedly occurred on 17.11.2015 but with modified and exaggerated version. Even otherwise, there is a delay of approximately 2 years in lodging the FIR. In the said FIR also, no role, of any sort, has been attributed to the petitioners. Learned counsel for the petitioner further contended that after about 27 months of the alleged occurrence i.e. on 03.01.2018, the respondent No.2 got recorded a statement that he has identified the accused persons to be the petitioners.

On the other hand, learned State counsel asserted that challan in the present case has been filed on 17.08.2022 and charges are yet not framed. He, on instructions from ASI Surender Singh, also informed that petitioner No.1 did not appear and as such, non-bailable warrants was issued against

him on 22.12.2022 and on 19.01.2023. Eventually on 14.02.2022, petitioner No.2 has been granted regular bail by this Court.

Reply on behalf of respondent No.2 has been filed stating that petitioners are avoiding the process of law and did not appear before the Investigating Officer and as such proclamation notice was issued against them which was duly executed on 02.12.2018. However, they failed to put in appearance and as such the petitioners were declared as proclaimed person vide order dated 14.01.2019 (Annexure R2/1).

Learned counsel for the respondent No.2 further asserted that the police rightly added the offence under Section 302/201 IPC in the instant FIR because the father of respondent No.2 died due to injuries given by the petitioners and their co-accused. Respondent No.2 even filed cancellation of anticipatory bail granted to the petitioner by way of filing CRM-M-5832-2022.

Having heard learned counsel for the parties and after going through the case file, this Court is of the considered view that this petition deserves to be allowed.

Firstly, respondent No.2 has failed to place on record any document to show that the post mortem on the person of the father of the respondent No.2 was got conducted to establish the assertion made by respondent No.2 relating the cause of death of his father with the incident which allegedly took place on 17.11.2015. In the absence of any such evidence, the allegation against the petitioners is nothing but absurd and a concocted story to falsely implicate the petitioners by unrulily getting added Sections 302 and 201 IPC in the instant FIR.

Secondly, the petitioners have appended with the petition, a copy of MLR report of the father of the respondent No.2 (Annexure P2) coupled with the x-ray report (Annexure P3) which clearly shows that no bony was seen on the person of the father of respondent No.2. The MLR also recorded that the father of respondent No.2 was “*conscious, cooperative and well oriented to time place and person*” and that he complained of pain in neck and had “*history of Epistaxis*”.

At this stage, learned counsel for the petitioner rightly asserted that the father of the petitioner – Vinod Goel was suffering from some other ailments for which he got himself examined and admitted in Fortis Hospital where the doctors found that there is some problem in his brain and was discharged vide summary dated 01.10.2016 (Annexure P6). Father of the respondent No.2 died due to heart attack on 09.10.2018 that too after 3 years of the alleged occurrence of 17.11.2015 and no post mortem was got conducted of Vinod Goel which shows that respondent No.2 has ulterior motives and mala fide towards the petitioners, who, in no way, are connected to the alleged incident.

Thirdly, it is an undisputed fact that the petitioners are neither named in the FIR nor are named in the complaint. It is only after five years of the alleged incident that the respondent No.2 has suddenly identified the petitioners to be the one who were the alleged assailants in the present FIR. Respondent No.2 and Sandeep Jain were in business dealings with the each other and it has also come on record that petitioners were also known to respondent No.2. It is hard to believe that respondent No.2, at the time of lodging of FIR, did not name the petitioners but after five years, all of

sudden, some unknown powers appeared in respondent No.2 and he identified the petitioners who are the assailants. The motive behind such false aspersions is writ large that the respondent No.2, in order to settle his scores with Sandeep Jain and his family members, and for that matter, the petitioners, implicated the petitioners in the present FIR which is nothing but sheer abuse of process of law.

For the reasons discussed above, this Court is in agreement with the submissions made by learned counsel for the petitioners.

Accordingly, this petition is allowed and the FIR No.177 dated 06.09.2017 under Sections 302/201/323/148/149 IPC registered at Police Station Civil Lines Batala, Police District Batala (Annexure P7) qua the petitioners along with all subsequent proceedings arising therefrom, are hereby quashed.

15.02.2023
V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No