

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

CRM-M-13600-2023 (O&M)

Reserved on: 07.12.2023

Pronounced on: 14.12.2023

NATHA SINGH

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Sanjiv Kumar Aggarwal, Advocate and
Mr. Ojas Bansal, Advocate, for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Aditya Sanghi, Advocate, for respondents No.2 to 4.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays for setting aside the order dated 03.09.2021 (Annexure P3) passed by Id. JMIC, Dabwali, Sirsa, dismissing the complaint No. COMI/71/2017 filed against respondents No.2 to 4 to prosecute them under Sections 323, 324, 326, 452, 504, 506 and 34 IPC without summoning them. Also under challenge is the order dated 17.01.2023 (Annexure P5) passed by Id. Sessions Judge, Sirsa in CRR-87-2021, dismissing the criminal revision against the aforesaid order dated 03.09.2021.

2. On perusal of the paper book, it emerges that complainant in question (Annexure P2) was filed by the petitioner to prosecute respondents No.2 to 4 on the allegations that on 25.11.2016 at about 9.00 PM, respondents No.2 to 4 armed with lathi, kappa and knife respectively, came to his house, started abusing him and caused injuries with their respective weapons. It was

also alleged that on making noise by him, his wife Sukhjit Kaur came and tried to save him, but accused attacked her also causing injuries. Jaspal Singh and Sukha @ Randhir Singh reached there on hearing commotion, at which respondents No.2 to 4-accused then fled away with their respective weapons. Complainant and his wife were got admitted to the Government Hospital, Dabwali for treatment. Statement was given to the police by the complainant, but no action was taken. It was alleged that to the contrary, the accused-respondents No.2 to 4 in collusion with the police lodged an FIR No.324 dated 26.11.2017 under Sections 147/148/149/307/427/506 IPC and Section 25 of the Arms Act, in Police Station Sadar Dabwali against the complainant-petitioner, his wife Sukhjit Kaur and others.

3. After recording preliminary evidence, Id. JMIC dismissed the complaint vide impugned order dated 03.09.2021 (Annexure P3). On the revision filed by the petitioner, the same was dismissed by Id. Sessions Judge, Sirsa vide order dated 17.01.2023 (Annexure P5).

4. It is contended by Id. counsel that both the Courts below failed to appreciate the legal position regarding the conditions to be taken into consideration for dismissal of the complaint filed for summoning and punishment to the accused, as the Courts did not appreciate the fact that several injuries had been caused to the petitioner and his wife by respondents No.2 to 4, which are duly reflected in and corroborated by the medical evidence. Copies of the medico legal reports along with the Xray reports are Annexures P6 to P9. The Courts disbelieved the testimony of injured and eyewitnesses, which was corroborated by the medical evidence. Though the police had recorded the statement of the petitioner, while he was admitted in the hospital and later on he and his wife had approached the police several

times and made various representations, but no action was taken, as police was hands in glove with respondents No.2 to 4 and at their instance, lodged the false FIR. The Courts below also failed to consider that even in the report under Section 202 CrPC filed by the police in the Court of Id. JMJC, it never came that petitioner had got into any kind of physical fight with respondents No.2 to 4 or caused any hurt to them or that in that fight, complainant himself got hurt. Id. counsel has also referred to *Shivjee Singh Vs. Nagendra Tiwary and others, 2010(3) RCR (Criminal) 466*, so as to contend that only *prima facie* evidence is required to be seen at the time of considering the issue of process and even the person charged of an offence in complaint might have a defence and that the matter is required to be left to be decided by an appropriate forum at an appropriate stage. With these submissions, prayer is made for setting aside the impugned orders and to issue appropriate direction to the Courts below.

5. Upon notice to the private respondents, they made appearance through their counsel and contested the petition, by submitting that cogent reasons have been given by Courts below so as to dismiss the complaint.

6. After hearing both the sides, I find no merit in this petition.

7. While dismissing the complaint, it is noted by Id. Magistrate in its order dated 03.09.2021 that although the incident is alleged to have taken place on 25.11.2016 at about 9.00 PM, in which complainant and his wife allegedly suffered various injuries, but as per the MLRs produced on record, the same were prepared on 26.11.2016. The MLRs further revealed that complainant and his wife had gone to the hospital at 8.00 PM on 26.11.2016 and no explanation had been offered for this delay in going to the hospital. It

was further noticed that at the behest of accused – respondents, FIR No.324 dated 26.11.2017, under Sections 147/148/149/307/427/506 IPC and Section 25 of the Arms Act, in Police Station Sadar Dabwali had been registered against the complainant and his wife and one another person. It was also noticed that report under Section 202 CrPC was called from SHO, Police Station, Dabwali, which revealed that quarrel had taken place between two parties on 26.11.2016, at which FIR No.324 had been registered and this factor was quite relevant because on one hand complainant alleged the occurrence to have taken place on 25.11.2016, but as per the medical report, complainant and his wife went for treatment on 26.11.2016 at about 8.00 PM and so, the case of the complainant was not believable and that it appeared that complaint had been filed as a counter-blast to the FIR lodged by the accused-respondents.

8. While dismissing the revision against the aforesaid order, ld. Sessions Judge, Sirsa observed as under: -

“10. After having heard both the sides and perusing the record carefully, it would transpire that filing of aforesaid cross case registered against the revisionist, his wife and another person, with regard to some incident is a matter of record, while as per the allegations of the revisionist- complainant, the incident in the instant complaint occurred at about 9.00 p.m. on 25.11.2016 and at the hands of accused persons, he alongwith his wife suffered many injuries, but on the other hand, perusal of MLRs Ex.P3 and P4 of both the injured, reveals the date of arrival of both the injured in the hospital as 8.00 p.m. and that too on the next day i.e. 26.11.2016. There is no explanation of delay of about 23 hours in seeking medical help by the injured. Therefore, it would become clear that the complainant and his wife went to the hospital after around 23 hours of the alleged occurrence despite suffering many injuries as alleged, at the hands of accused persons and such delay has not been explained by them. Furthermore, perusal of Ex.P3 and Ex. P4 MLRs of both the injured clearly reflect that the duration of injuries

suffered by the injured within six hours, whereas both the injured had gone to the hospital after about 24 hours. As such, there is grave discrepancy in the case of the complainant which goes to the root of the complaint case and cannot be ignored.

11. Further, bare perusal of report under Section 202 of Cr.P.C. duly placed on trial Court record, clearly reflects that a cross-case bearing FIR No.324 dated 26.11.2016, under Sections 147,148,149, 285, 307, 427 & 506 IPC and Section 25 of the Arms Act, got registered by the respondents against the revisionist, his wife and one another person.

In these circumstances it would appear that the allegations in the complaint do not inspire faith and appear to o be manipulated.

9. This Court finds absolutely no perversity or illegality in the aforesaid orders as passed by the Courts below, which are based on proper appreciation of evidence. Here itself, it may be noticed that though the vernacular copy of the MLRs (Annexures P6 & P7) pertaining to the petitioner and his wife, as produced in this petition, would reveal that injuries to them recorded by the Medical Officer on 26.11.2016 at 9.00 PM, were caused within the 6 hours, but this fact regarding duration of injuries has been concealed in the translated copies of the MLRs as placed on record, which indicates that petitioner has even tried to mislead this Court. Further, in case the injuries were caused to the petitioner and his wife within six hours prior to their arrival in the hospital on 26.11.2016 at 9.00 PM, so obviously the injuries could not have been caused to them on 25.11.2016 at about 9.00 PM as was alleged in the complaint.

10. In the case of ***Shivjee Singh (Supra)*** relied by ld. counsel for the petitioner, it has been held by Hon'ble Supreme Court that issue of process can be refused when the Magistrate finds that evidence led by the complainant is self contradictory or intrinsically untrustworthy.

11. The aforesaid legal position is clearly applicable to this case, as in the present case also, the evidence led by the petitioner-complainant is self-contradictory and intrinsically untrustworthy. Complaint clearly appears to have been lodged as a counter-blast to the FIR lodged at the behest of respondents No.2 to 4.

No merits, dismissed.

Pending application(s), if any, stand disposed of.

14.12.2023

Vivek

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	No