

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

**CRM-M-18080 of 2022**  
**Date of decision : 22.05.2023**

Vishwanath Gadkar

.....Petitioner

Versus

The State of Haryana

.... Respondent

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. Manu Sachdeva, Advocate and  
Mr. Inderpal Singh, Advocate for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

\*\*\*\*

**AMAN CHAUDHARY, J.**

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.95, dated 25.03.2018, registered under Section 160 of Indian Penal Code, 1860, at Police Station Murthal, District Sonipal (Haryana) and the subsequent proceedings including challan/final report, Annexure P-2, arising therefrom.

2. Learned counsel for the petitioner would submit that the petitioner, who was working in Merchant Navy as a 'Deck Incharge', is a resident of Vikhroli, Mumbai (Maharashtra), visited Panipat to meet his friend. They both were dining at one Shiva Dhaba, on Delhi-Panipat Road and the police lodged an FIR against them alleging that they, being under the influence of liquor were scuffling and abusing each other. Learned counsel would further submit that

co-accused, namely, Ashish has since expired, as is noticed from the order dated 19.07.2020 passed by learned Chief Judicial Magistrate, Sonapat. The petitioner along with co-accused were arrested and taken for medical examination wherein no trace of liquor and no external injury was found. Further, nothing has been recovered from them and also there is no allegation that they have disturbed the public peace, as is required for attracting the offence of affray as per Section 159 IPC. Challan in the case was presented on 28.03.2018, whereafter charges were framed on 18.07.2018. However, no prosecution witness has been examined till date despite the fact that all are the official witness. The petitioner is without a job on account of the pendency of the case before the trial Court. He submits that fighting between two individuals cannot by itself lead to a conclusion that the public peace was being disturbed, unless there is some evidence of complaint in that regard. He relies on the judgments in the cases of **Muthuraja and others vs. The State Represented by the Inspector of Police, V.K. Pudur, Police Station, Tirunelveli District** CrI.O.P. (MD) No.11296 of 2021 and CrI.M.P. (MD) No.5767, 5769 of 2021, decided on 04.10.2021, **Nagarajan and others vs. The Sub-Inspector of Police, Nagudi Police Station, Pudukkottai District** CrI.O.P. (MD) No.17260 of 2018 and CrI. M.P.(MD) No.7624, 2018, decided on 27.09.2018, **Gadadhar Guru vs. State of Orissa** 1989 CriLJ 2080, **Faruk Kadarbhai Memon vs. State of Gujarat**, Criminal Misc. Application No. 7025 of 2017, decided on 27.03.2017, **Abhimanyu and others vs. State of Haryana**, CRM-M-1933-2021 decided on 09.02.2022 and **Mohit Aggarwal and others vs. State of Haryana and another**, CRM-M-30817-2017 decided on 31.08.2022.

3. Learned State counsel, on the other hand, would submit that the petitioner along with his friend was arrested from the spot, where they were found to be scuffling and abusing at a public place, which itself was evidence enough of disturbance of public peace. After investigation, the challan was presented against them. The trial Court has rightly framed the charge.

4. Heard learned counsel for the parties at length.

5. It is apposite to make a reference to Section 159 IPC, which defines the offence punishable under Section 160 IPC, which reads thus:-

“**159 Affray**-When two or more persons, by fighting in a public place, disturb the public peace, they are said to ‘commit an affray’.”

6. In **Gadadhar Guru** (supra), the conviction of the petitioners was set aside, on the ground that, only if, the ingredients of the offence of affray are satisfied, can it be said to have occasioned for which persons causing the same would be responsible. The ingredients of the offence under Section 159 IPC enumerated being that, “An offence of array in essence consists of three ingredients, the first being fighting by two or more persons, secondly, the fighting must take place in a public place and thirdly such fighting must also result in disturbance of the public peace.”

7. The High Court in **Faruk Kadarbhai Memon** (supra) observed that the necessary ingredients to constitute an affray as defined in Section 159 IPC, are (1) a fighting (2) between two or more persons (3) in a public place, and (4) consequent disturbance of the public place. The criminal proceedings in FIR were

quashed on the ground that mere quarreling or abusing in a public place without exchange of blows is not sufficient to attract the application of Section 160 IPC.

8. The pertinent aspect that emerges in the present case is the alleged fight was between two friends, dining together at a Dhaba on a highway in the wee hours of the morning, as in the FIR it has been mentioned that the ruqa was sent at 4:40 am. The allegation of them being under the influence of liquor, was not shown to have been confirmed by the medical report. There is neither an allegation in the FIR nor material in the final report even remotely suggesting that there was any successful or otherwise exchange of blows and in the MLR as well, no injury was reflected. The same, thus did not cross the line into criminal activity, while the trial has been pending for close to 5 years, without it having proceeded beyond the stage of framing of the charge in the year 2018, for want of depositions by the official witnesses, there being none other cited.

9. Tracing back the view as regard the allegations in the case at hand are concerned, it was held in **Jagannath Sah vs. Emperor**, AIR 1937 Oudh, 425, that the offence of affray as defined in Section 159 IPC postulates the commission of definite assault and a breach of the peace and mere quarreling or abusing in street without exchange of blows is not sufficient to attract the application of this Section and this Court in **Puran Chand vs. The State**, 1963 PLR 813, observed that to constitute affray exchange of blows was a must.

10. An essential ingredient of the offence being disturbance of public peace is more pervasive and of wider reach. There must be a *prima facie* positive evidence of having disturbed the tranquility, which is complained of by the one

affected. The police have to of course keep a vigil and take prompt action where required to restore peace but are also duty bound to distinguish between the different forms of altercation, so as to set the criminal law in motion. Independent corroboration to the alleged incident is conspicuously absent. There being no concept of automatic presumption of disturbance of peace, no material is on the record from which it may be patent that there was a supervening apprehension of threat or danger to a third person present at the spot, eventuating in the peace being disturbed, on account of the altercation as alleged between the petitioner and his co-accused friend (now deceased). Suffice it to say that the FIR *ex facie* lacks the basic ingredients of the offence under Section 159 IPC, for which the petitioner has been made to stand trial.

11. The F.I.R. registered against the petitioners in **Muthuraja and others** (supra) and **Nagarajan and others** (supra) were found to be unsustainable and the same were quashed in exercise of the jurisdiction under Section 482 of Cr.P.C. by observing that there was absence of material and specific allegations of breach of peace, on account of the fight that arose between two groups of students who continued to try to assault each other with hands.

12. This Court in **Abhimanyu** (supra) had quashed the FIR, observing that although the petitioners were fighting in a public place, which was noticed by the duty guard, who subsequently called the police officials, but finding that there was no evidence of the petitioners having disturbed the public peace, it may not be an offence of affray and would not fall under Section 160 IPC.

13. The exposition of law on the subject relating to the scope and ambit of power under Section 482 Cr.P.C. is well settled by Hon'ble The Supreme Court in myriad kinds of cases, for it be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice, for the administration of which alone, the Courts exist. In **State of Karnataka vs. L. Muniswamy and others**, (1977) 2 SCC 699, it was observed and held by Hon'ble The Supreme Court that, in the exercise of this wholesome power, the High Court is entitled to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the; ends of justice require that the proceeding ought to be quashed. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.

14. Hon'ble The Supreme Court in **Jugesh Sehgal vs. Shamsheer Singh Gogi**, (2009) 14 SCC 683, held that, "Although in Bhajan Lal's case (*supra*), the court by way of illustration, formulated as many as seven categories of cases, wherein the extra-ordinary power under the afore-stated provisions could be exercised by the High Court to prevent abuse of process of the court yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised."

15. Having analysed the facts and circumstances in the framework of the present case and the provisions, on the anvil of the explication of law referred to

hereinabove, this Court is of the firm view that allowing the proceedings to continue against the petitioner would be an abuse of process of law and thus, is persuaded to quash the same by invoking the wide and plentitude power under Section 482 Cr.P.C. in order to secure the ends of justice.

16. The petition is allowed. FIR No.95, dated 25.03.2018 and consequential proceedings emanating therefrom are hereby quashed.

22.05.2023  
*Anjal*

[AMAN CHAUDHARY]  
JUDGE

|                           |            |
|---------------------------|------------|
| Whether speaking/reasoned | : Yes / No |
| Whether reportable        | : Yes / No |