

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-26634-2019 (O&M)

Date of decision: 04.09.2023

Pawan Kumar

...Petitioner(s)

Vs.

Parkash Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Surinder Garg, Advocate
for the petitioner.

NIDHI GUPTA, J.

Prayer in the present petition under Section 482 Cr.P.C. is for setting aside order dated 26.09.2016 (Annexure P2) passed by learned Judicial Magistrate, 1st Class, Faridkot, and order dated 11.07.2018 (Annexure P3) passed by learned Additional Sessions Judge, Faridkot in Criminal Case No.RT-21/08.07.2011/26.05.2015 under Sections 452, 323, 354, 500, 506, 120-B, 148 and 149 IPC (Annexure P1) titled as "Pawan Kumar Vs. Parkash Singh & Others", whereby the accused/respondents No.1 to 4 herein have been discharged from allegations levelled against them in complaint (Annexure P1) filed by the petitioner herein.

2. Brief facts of the case as averred in the complaint are that some time ago, petitioner's leg was operated upon, due to which he could not walk properly and was like a handicap. Respondents No.1 to 4 herein had a grudge against the petitioner and his family without any reason. On 02.06.2011, at about 7 pm, the petitioner along with his wife

Asha Rani; daughters-in-law Kavita Rani and Ritu Sharma, grandsons Atul Kumar and Paras Kumar and daughter Tanu was present in the house, then Parkash Singh (respondent No.1), Mangat Ram @ Mangi (respondent No.2), Rajinder Sharma (respondent No.3), Parshotam and Rajinder Kumar (respondent No.4) along with employees of Excise Department and some unknown persons entered the house of the petitioner illegally. They came in vehicles bearing No.PB-11L-0062 and PB-04A-4836 and one jeep bearing No.1136. Upon entering the house of the petitioner, the aforesaid persons pushed the petitioner and started abusing and giving kick blows to the females present in the house. Thereafter, the aforesaid persons started searching the house of the petitioner and scattered the articles of the house. But they could not find any illegal article from the house of the petitioner. Respondent No.1-Parkash Singh was putting pressure upon the petitioner to hand over the liquor kept by him in his house. When people started gathering in the street, aforesaid persons fled away from the spot while giving threats that they would get false case registered under the Excise Act against the petitioner and his family. The motive behind the occurrence was that a wine shop contractor Malhotra had opened a wine shop in the neighbourhood of the petitioner due to which females of the street were feeling uncomfortable and the petitioner was asking for closure of the said wine shop. Due to this reason, the aforesaid persons had done the aforesaid act.

3. Learned counsel for the petitioner inter alia submits that the concurrent findings returned by the learned Courts below are contrary

to the comprehensive and cogent evidence produced by the petitioner. It is submitted that at the time of framing of charge, prima facie case is to be seen whether any offence is made out against the accused/respondents No.1 to 4 or not. However, in the present case, learned Courts below have given the finding that evidence led by the petitioner/complainant is not sufficient to convict respondents No.1 to 4 which is wrong. Learned counsel further submits that the petitioner had even examined five witnesses including himself in support of his case and all witnesses had unanimously and clearly stated that offence has been committed by the respondents No.1 to 4 yet such evidence has been ignored and the respondents No.1 to 4 have been discharged.

4. Learned counsel further submits that even the finding of the learned Courts below that no motive can be assigned to the respondents No.1 to 4, is factually incorrect. Learned counsel states that if there was no enmity of the petitioner with the respondents No.1 to 4, then why would the petitioner implicate them in a false case. It is contended that even the finding of the learned Courts below to the effect that no molestation and injury has been caused to the women of the family of the petitioner, is incorrect and contrary to the evidence. Learned counsel further states that the very fact that respondent No.1 has admitted in his testimony that a raid was conducted in the house of the petitioner proves the presence of the accused/respondents No.1 to 4 at the spot. However, these facts have been ignored by the learned Courts below.

5. I have heard learned counsel for the petitioner.

6. Relevant findings of the learned Additional Sessions Judge, Faridkot as contained in the impugned order dated 11.07.2018 are reproduced hereinbelow:-

“13. After hearing learned counsel for the parties and going through the evidence on record, I have arrived at a conclusion that learned trial court has not committed any illegality in discharging the accused because of weak and feeble testimony of complainant. Perusal of complaint shows that no doubt that complainant while appearing in witness box reiterated the version of the complaint, but his testimony suffered from many improvements on material points. CW1 Complainant failed to give any specific reply regarding motive. On one hand he has complained that the wine contractor wants to open one branch/liquor vend/shop at the turning point of the street, on the other hand, it is stated that they had already opened the same. When appeared in dock, it is stated that firstly they opened the same, but there-after it was closed. Neither the date of opening the liquor vend nor of its closure has been mentioned. Complainant has failed to mention the date, month and year when the said liquor vend was opened and from how much time same was closed. Regarding date and time of occurrence, in complaint, in para No.3, it is mentioned as 2.6.2011 at about 7:00PM, whereas in Ex.DA, application sent to Commissioner, Excise and Taxation Department, Patiala, by complainant, the date of occurrence is mentioned as 6.2.2011 and no time has been mentioned. Similar is in Ex.DB. But in complaint the date of occurrence is mentioned as 2.6.2011. There is no explanation given by the complainant regarding such contradictory statement about the date of occurrence. Even the witnesses are highly discrepant and contradictory to

each other regarding the mode and manner in which the alleged occurrence took place. CW2 Asha Rani (eyewitness) failed to name any person who molested her nor she has given the name of persons attracted to the spot. Rather CW2 has categorically stated the officials of Excise Department, who raided at her house, stated that they have secret information that complainant is doing illegal business of liquor. CW3 Gurmukh Singh also deposed that the reason for conducting the raid has been disclosed by the excise official. But CW2 Asha Rani has failed to utter even a single word regarding presence of CW3 Gurmukh Singh at the spot. It has been emphasis by learned counsel for appellant that during inquiry, Parkash Singh himself admitted that he conducted raid at the house of complainant, meaning thereby his presence is proved at the spot and the same has been ignored by learned Trial Court. In statement mark-B, of Parkash Singh recorded by DSP during inquiry as well as report Ex.DC, it has been emerged that accused Parkash Singh being Excise Inspector conducted raid at the house of complainant but has been specifically mentioned that in pursuance of his official duty such raid was conducted on the basis of secret information, received by accused, being excise official. No doubt that some provisions of law have not been complied with by Parkash Singh(accused) at the time of conducting the raid at the house of complainant, but even then it will not amount to illegality and does not vitiate the proceedings. Here in the present case, the allegations are that whether the accused forcibly entered into the house of complainant and thereafter molested complainant and caused simple hurt. At the first stage, in statement, it is categorically stated by Parkash Singh (accused) that they only visited the house of complainant on the receipt of secret information that complainant was selling illicit liquor and the reasons regarding

conducting the raid of the house of complainant, were disclosed to CW2 Asha Rani and CW3 Gurmukh Singh, as stated by them in examination-in-chief. CW2 herself disposed that excise department raided the house and when complainant and his family members objected, they returned back. Meaning thereby after objections of family members of complainant, all the accused left the place of occurrence. The sole independent witness CW3 Gurmukh Singh corroborated the version of CW2, only to that effect and he has nowhere stated about the occurrence of molestation or causing simple hurt. In this circumstance, the aforesaid order passed by learned Judicial Magistrate, is conformity with the provisions of section 245(1) of the Code of Criminal Procedure accordingly to which if, upon taking all the evidence referred to in section 244, the Magistrate considers for reasons to be recorded, that no case against the accused is made out which, if un-rebutted, would warrant his conviction, the Magistrate shall discharge them.

14. In view of the aforesaid evidence on record, learned trial court has rightly come to the conclusion that even if the evidence of the complainant goes unrebutted, it would not result into conviction of the accused under Section 452, 323, 354, 500, 506, 120B, 148, 149 of IPC. Hence, such legal order of Learned Judicial Magistrate cannot be disturbed. I find no merits in this revision petition and the same is hereby dismissed. Trial court file along with copy of this order be sent back. File be consigned to record-room."

7. Learned counsel for the petitioner is unable to dispute or controvert the above said concurrent findings of the learned Courts below. Nothing has been placed on record or shown to this Court to prove the above said findings to be incorrect.

8. In view of above, I find no ground is made out to interfere in the impugned order. Present appeal accordingly stands **dismissed.**

9. Pending application(s) if any also stand(s) disposed of.

04.09.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No