

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-43933-2017

Date of Decision: 04.07.2023

Kuldeep Singh

.... Petitioner

Versus

Gurdyal Singh and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Ishmeet Singh, Advocate for
Mr. Sherry K. Singla, Advocate for the petitioner.

NIDHI GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of impugned order dated 11.07.2016 (Annexure P-1) passed by the learned Judicial Magistrate Ist Class, Rajpura, dismissing the complaint of the petitioner bearing Complaint No. 77RT/15 dated 17.05.2021, and order dated 29.03.2017 (Annexure P-2) passed by the learned Additional Sessions Judge, Patiala, affirming the order dated 11.07.2016.

Briefly stated, facts relevant for disposal of present petition are that the petitioner-complainant filed a private complaint against the respondents and one-Ajaib Singh, under Sections 452, 307, 323, 324, 325, 326, 342, 354 read with Section 34 IPC, on the allegations that he is running a Big Apple Public School at Banur and also resides there. His parents are also residing on the first floor of the said school. On 04.09.2009, around 6:30 P.M., when Parkash Kaur, wife of the petitioner

was standing in front of the office of the school on the ground floor, respondent No. 1-Gurdial Singh and Ajaib Singh, tried to forcibly enter into the school to which she refused. Then, the said persons started flirting with Parkash Kaur and also abused her. They also threatened her that they will forcibly take possession of the land of her brother Ajitpal Singh and that of the house and school of the petitioner. After some time, the petitioner came at the spot and raised the objection as to why they have entered into his house. Upon this, both the assailants started hurling abuses at him. Thereafter, both the accused persons assaulted and caused injuries to the petitioner and his wife with *dandas*. In the meantime, Rajinder Singh and Manjit Kaur, respondents No. 2 and 3, respectively armed with *dandas* also came at the spot and all the accused persons in connivance with each other gave beatings to the petitioner and his wife with *dandas* and legs. They also gave beatings to Angad Singh son of the petitioner. On raising hue and cry all the assailants fled away from the spot.

After recording preliminary evidence; hearing learned counsel for the petitioner-complainant and perusing the evidence on file, the learned trial Court dismissed the complaint vide impugned order dated 11.07.2016 (Annexure P-1).

Being aggrieved, the petitioner challenged the said order by way of revision, but remained un-successful as the same too was dismissed vide order dated 29.03.2017 (Annexure P-2) by the learned Additional Sessions Judge, Patiala.

Learned counsel for the petitioner, *inter alia*, contends that the impugned orders passed by the trial Court as well as the revisional

Court are based on conjectures and surmises, inasmuch as, both the Courts below have failed to appreciate the oral as well as documentary evidence adduced by the petitioner, which had clearly established the complicity of the respondents in assaulting and causing injuries to the petitioner, his wife-Parkash Kaur and son-Angad Singh. There are discrepancies and contradictions in the statements of the witnesses which may occur with the passage of time. Thus, the trial Court ought to have summoned the respondents to face trial.

I have given my thoughtful consideration to the submissions made by learned counsel petitioner and also gone through the impugned orders passed by both the Courts below.

Admittedly, on 04.09.2009 in the evening, the respondents in connivance with each other have forcibly entered into the house of the petitioner and assaulted and caused injuries to the petitioner, his wife and son-Angad Singh. He reported the matter to the police vide Rapat/DDR No. 13 dated 05.09.2009, but since no action was taken by the police, the petitioner filed a criminal complaint before the concerned Magistrate against the accused persons. In support of his complaint, the complainant has examined, inasmuch as, 7 witnesses including himself as CW-4, his wife-Parkash Kaur as CW-2 and son-Angad Singh as CW-5. The trial Court after discussing the evidence in detail observed that the story put forth by the petitioner-complainant is improbable and there are no sufficient grounds to summon the accused person for the commission of alleged crime and dismissed the said complaint.

In ***Kunti vs. State of U.P., #Lawfinder#2214772***, the Hon'ble Supreme Court, has held that it is the duty and obligation of criminal

Court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

(emphasis supplied)

In ***Sonu Gupta Versus Deepak Gupta and others 2015 (2) RCR (Crl) 32 (SC)***, it has been held that at the stage of cognizance and summoning the accused, Magistrate is to find out whether *prima facie* case has been made out for summoning the accused persons.

Further, Co-ordinate Bench of this Court in case titled as ***Gurdeep Kaur Vs. Balbir Singh and others, 2005(2) RCR (Criminal) P & H 205*** has held that the learned trial Magistrate has to be, *prima facie*, satisfied as to whether there are sufficient grounds for proceeding against the accused named in the complaint or not. It is not the duty of trial Magistrate to enter into detailed discussion on the merits or demerits of the case.

(emphasis supplied)

In view of the above referred judicial precedents, it has become clear that Magistrate merely on the basis of some statements of the alleged witnesses should not issue process/summon the accused and has to carefully examine the nature of allegations made in the complaint and scrutinize the evidence on record for issuance thereof. Also, if the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and shall briefly record his reasons for the same.

In the present case, both the Courts below have rightly observed that there are major contradictions in the versions given by the injured-Parkash Kaur in Rapat/DDR No. 13 and the petitioner in private

complaint. Respondent No. 3-Manjit Kaur is the mother of the petitioner-complainant but this fact has not been mentioned by him in the complaint whereas injured-Parkash Kaur in DDR/Rapat No. 13 had specifically stated that respondent No. 3 is her mother-in-law. She had specifically alleged that her mother-in-law/Manjit Kaur, along with her accomplices physically assaulted her, her husband (petitioner herein) and son-Angad Singh. In the complaint, the petitioner had also alleged that the accused persons have flirted with his wife-Parkash Kaur, whereas no such allegations have been levelled by her in the DDR. Further, as per version of the complainant-petitioner in the complaint, on 04.09.2009, the respondents have caused injuries to him as well as to his son-Angad Singh, but there is no medical evidence on record in this regard. There is no medical opinion of the doctor that the injuries suffered by Parkash Kaur were simple or grievous. Thus, the oral evidence led by the complainant-petitioner is not corroborated by any medical evidence.

More so, perusal of the record shows that there is a property dispute in between the parties which is purely of civil nature and the same has been given colour of criminality by twisting the real facts.

In view of discussion made about, I do not find any illegality or perversity in the impugned orders passed by the Courts below. Consequently, the instant petition being without any merit, fails and is dismissed.

04.07.2023
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No