

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

256

2023:PHHC:136097

CRM-M-23351-2023

Date of decision: October 3rd, 2023

Manjeet Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. B.S. Jatana, Advocate
for the petitioner.

Mr. Pankaj Khullar, Assistant Advocate General, Punjab.

Ms. Gagandeep Kaur, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J.

The instant petition is for quashing of criminal complaint i.e. COMI-105 of 2022 dated 16.07.2015/29.10.2022 under Sections 376-D, 323 and 452 of the Indian Penal Code, 1860 pending in the Court of JMIC, Phul, and summoning order dated 14.07.2022 (Annexure P-2) passed by learned Additional Sessions Judge, Bathinda, whereby petitioner along with other co-accused has been summoned for offence under Sections 323, 452, 506, 34 of the IPC.

2. Before proceeding further, it would be apposite to reproduce the allegations levelled in the complaint, which read as under:-

“That on 05.07.2015 at about 08.30p.m. the complainant was preparing meal and her son Jaspreet Singh was studying. In the meantime, accused Ashok Singh, Jony Singh, Malkeet Singh, Balwant Singh who were in inebriated condition entered into her house and threatened her son to go outside and stated that if he raised any noise, then they would throw him in the canal. Thereafter, her son came in the courtyard and did not raise any noise out of fear.

She also came outside the room. The accused Ashok Singh and Hira Singh Gill Additional Sessions Judge PB-0153 Amarjit Kaur Vs. Ashok Singh etc. 3 Date of Decision: 14.07.2022 Malkeet Singh dragged her inside the room and Ashok Singh said that if she raised any noise then she would be thrown in the canal. Malkeet Singh caught her and Ashok Kumar bit on her cheeks and arms. Thereafter, Jony Singh and Balwant Singh also entered in the room. She did not raise any noise out of fear. Jony Singh and Ashok Singh removed her shirt. Malkeet Singh tied her arms with her "chunni" and then Malkeet Singh removed her salwar. Then accused Malkeet Singh, Balwant Singh and Jony Singh raped her. Ashok Singh and Balwant Singh bit her on her breast. Thereafter, accused threatened her to with the dire consequences, if she disclosed the facts to anyone or before the police. Then her health became serious. Her son called their neighbourer Baljit Kaur, who advised her so to take her mother to the Hospital. When she came out side of her house, Gurmeet Kaur wife of Malkeet Singh who was standing in the street, abused her and hit a brick on her head. Her son and said Baljit Kaur took her to Hospital. Police did not record her statement nor took any action. Rather the police pressurized her to compromise the matter as accused No.6 and 7 connived with other accused. So, the police did not take any action."

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. Learned counsel for the petitioner has submitted as under:-

(i) That a bare perusal of the complaint, which has been annexed as Annexure P-1, reveals that *prima facie* the ingredients of the offences alleged are not even made out and thus, the trial Court had gravely erred in summoning the petitioner vide summoning order dated 14.07.2022 (Annexure P-2).

(ii) That though the Revisional Court had summoned the petitioner vide order dated 14.07.2022, however, it had also expressed doubt regarding a significant portion of the allegations levelled by the complainant against him particularly to the offences under Sections

376-D, 323, 452, 506, 34 of the IPC. Thus, a serious shadow was cast upon the credibility of the version brought forth by the complainant against the petitioner.

(iii) That it was a matter of record that the petitioner had served as SHO at Police Station City Rampura only for six days w.e.f. 05.07.2015 till 11.07.2015, after which he had been transferred; the petitioner had never ever visited Police Station City Rampura thereafter. In fact, on 05.07.2015, a quarrel had taken place between the complainant and co-accused, as a result of this altercation, complainant Malkit Singh and Gurmeet Kaur, wife of Malkit Singh, were admitted to Civil Hospital Rampura. On being admitted, the hospital had informed the police about their admission in the hospital. On receipt of information, ASI Balwant Singh (accused No.6) had gone to the Civil Hospital, Rampura. However, as the medical records had not yet been prepared, the proceedings were postponed to the next day. In support, learned counsel has drawn the attention of this Court to copy of Rapat Roznamcha Nos.13 and 15 dated 06.07.2015, Police Station City Rampura (Annexures P-4 and P-5 respectively). On the next day, ASI Balwant Singh again visited the Civil Hospital, Rampura, where the complainant gave her statement to the effect that she had been raped. The petitioner then asked ASI Balwant Singh to get the statement of the complainant recorded after joining some lady of an NGO. However, when ASI Sarwan Singh went to the hospital on 08.07.2017 and moved an application before the Medical Officer of the hospital for getting the statement of the complainant recorded, he was informed that she had left the hospital against medical advice. In support, learned counsel has drawn the attention of this Court to Annexures P-6 to P-9.

(iv) That the police officials could not be said to have been negligent, rather they had been duly and diligently performing their duty. That subsequently, the statement of injured Gurmeet Kaur was recorded, resulting in the registration of FIR No.71 dated 09.07.2015 under Sections 452, 323 and 34 of the IPC. In the aforementioned FIR, the complainant and her son were arrayed as accused. However, both the complainant and her son evaded the police until they obtained anticipatory bail from the trial Court on 12.08.2015, long after the petitioner had been transferred from Police Station, City Rampura. Thus, the allegations against the petitioner for not recording the statement of the complainant were completely baseless.

(v) Moreover, on 13.08.2015, the complainant had given a statement to the police, admitting that she had not made any attempts for getting her statement recorded during her hospitalization at Civil Hospital, Rampura, and had come to the Police Station for the said purpose only on that day. In support, learned counsel has drawn the attention of this Court to Annexures P-12 and P-13, wherein also it stands reflected that no allegations were levelled against the petitioner.

(vi) Lastly, it has been vehemently argued that the complainant had concealed material and vital facts from the Court while filing the complaint in question, which clearly hinted that her motive was just to harass the petitioner by way of a frivolous and vexatious complaint.

4. *Per contra*, counsel for the respondent reiterated the submissions made and the stand taken by him before the Court below. It was vehemently contended that the petitioner had actively connived with the accused by refusing to take any action against them. A prayer was made for dismissal of the instant petition as the impugned order

summoning the petitioner to face trial in the complaint in question was perfectly justified.

5. I have heard learned counsel for the petitioner and perused the relevant material on record.

6. Without a doubt, this Court while exercising its power under Section 482 Cr.P.C. must exercise a great deal of caution and restraint, however, it is imperative for the Court to quash the FIR/complaint, in case, it comes across that by way of some criminal proceedings, the complainant is abusing the process of Court.

7. In the present case, the accusations against the petitioner are that he connived with the co-accused and failed to take any action, when he was approached by the complainant, thereby being negligent in his duties. Notably, a perusal of the complaint reveals that it is completely silent and rather no allegations have been levelled against the petitioner of having caused any injury under Section 323 of the IPC or having engaged in house trespass under Section 452 of the IPC. Furthermore, qua commission of an offence under Section 506 of the IPC i.e. criminal intimidation, merely the use of the term 'threat' would not suffice by itself to attract the mischief of an offence, under the aforementioned Section.

8. In the context of determining whether the alleged threat falls within the definition of 'criminal intimidation' it would be always crucial to focus on the intention of the accused while extending the alleged threats. For attracting the mischief of offence under Section 506 of the IPC, the threat extended by the accused must be made with a specific intent to create fear in the mind of the complainant, thereby compelling that person to either perform an action or refrain from doing

something. Simply uttering words without an intention to cause fear would not be enough to invoke the provisions of Section 506 of the IPC.

9. It would thus, be necessary to support the allegations qua criminal intimidation with some cogent evidence, from which it could be *prima facie* inferred that the accused, by his alleged threat, had left the complainant fearful of the same. In the facts and circumstances of this case, it does not seem that there was any intention on the part of the accused to cause any fear in the mind of the complainant and, therefore, there was no intention to obstruct the complainant in any manner whatsoever. The Hon'ble Supreme Court in *Manik Taneja Versus State of Karnataka 2015 (7) Supreme Court Cases 423* while dealing with the essential ingredients to constitute an offence under Section 506 of the IPC has observed as follows:-

11. So far as the issue regarding the registration of FIR under Section 353 IPC is concerned, it has to be seen whether by posting a comment on the Facebook of the traffic police, the conviction under that Section could be maintainable. Before considering the materials on record, we may usefully refer to Section 353 IPC which reads as follows:-

"353. Assault or criminal force to deter public servant from discharge of his duty.- *Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

12. A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should

have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, that the ingredients of the offence under Section 353 IPC are not made out.

10. Additionally, just because the petitioner has come up with a particular argument that the complaint in question is malicious and meritless, it becomes incumbent upon the Court to consider all the surrounding circumstances, so as to uncover the core issue.

11. When an accused invokes the inherent powers of this Court under Section 482 Cr.P.C. for quashing of some criminal proceedings or FIR on the ground that it is frivolous or vexatious, the Court is tasked with a crucial duty. The Court must then scrutinize the complaint/FIR with meticulous attention.

12. Once a complainant decides to pursue charges against an accused with an ulterior motive, like for example settling personal scores etc., the complainant ensures that such complaints, which have been filed to wreak vengeance on the accused, are meticulously crafted by including all the necessary legal contentions, so that the essential ingredients required to constitute the offences alleged are made out. Therefore, merely examining the averments made in the complaint would not be sufficient for the Court to determine as to whether the

essential ingredients of the alleged offence are present or not. In cases involving frivolous proceedings, the Court is obligated to delve into various contextual factors emerging from the material on record, which may also extend beyond the complaint itself. In the circumstances, if necessary, the Court should carefully and circumspectly attempt to decipher the underlying intention of the complainant behind the filing of the complaint. The Hon'ble Supreme Court in *Mahmood Ali & Ors. Versus State of U.P. & Ors. 2023 LiveLaw (SC) 613* has categorically held that while exercising its authority under Section 482 Cr.P.C., the Court is not to limit itself solely to the allegations levelled in the complaint/FIR, but the Court also possesses the authority to consider the overall circumstances leading to the registration of the case and the evidence gathered during investigation.

13. In the present case, it would also be relevant to refer to the zimnis recorded by the police, which have been annexed as Annexures P-6 to P-9, which clearly indicate that the police officials had been visiting the Civil Hospital, Rampura, for getting the statements of the complainant and other injured recorded, on a regular basis. However, it had come to light that the complainant had left the hospital against medical advice, even before her statement could be recorded by the police officials.

14. A perusal of Annexure P-12 reveals that the complainant and her son had approached the police officials for joining investigation in FIR No.71 dated 09.07.2015 under Sections 352, 323, 34 of the IPC, Police Station City Rampura, only on 12.08.2015 and that too after they had been granted anticipatory bail by the learned Sessions Court. Additionally, in her statement given to the police on 14.08.2015

(Annexure P-13), the complainant admitted that she had not got her statement recorded anytime earlier, even during her hospitalization at Civil Hospital, Rampura. Except for her bald allegations levelled, there is thus no material on record to even remotely suggest that the petitioner had in any manner colluded with the accused. In fact, the material suggests that it was the complainant herself, who had delayed the recording of her statement. Hence, in the circumstances, this Court has no hesitation to observe that continuation of criminal proceedings would be nothing but an abuse of process of law.

15. The instant petition is, therefore, allowed. The aforesaid complaint and all consequential proceedings arising out of it, are quashed qua the petitioner.

October 3rd, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes