

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-18994-2021(O&M)

Date of Decision:17.01.2023

Raman Kumar Mahajan and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Rakhi Sharma, Advocate,
for the petitioners.

Mr. Saurav Verma, Addl. A.G., Punjab.

VINOD S. BHARDWAJ , J.(Oral)

The instant petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of direction to respondent Nos.2 and 3 against not performing their public duties/statutory duties.

Briefly, the case is that petitioners and private respondents are living in different portions having a common courtyard and house number. On the date of incident, the petitioners were cleaning their shop when water fell on the car of accused persons giving rise to an altercation. The accused allegedly did not accept the apology and called their family members and they forcibly entered the shop and caused beatings to the petitioners. The matter was reported immediately to the police on 31.05.2021 but only a

DDR was recorded and no steps were taken thereafter even though all evidence had been furnished. The MLRs and X-ray reports of the petitioners were also submitted to the police showing fracture of the little finger.

Despite submission of evidence and representations, no action was taken; rather, even the evidence was misplaced. Hence, the present petition was filed.

Pursuant to the notice issued by this Court, reply by the respondents-authorities had been filed. As per the status report filed by way of affidavit of Surinder Singh, PPS, Assistant Commissioner of Police, Amritsar dated 28.07.2022, petitioners Raman Mahajan and Nitin Mahajan had an altercation with their neighbours Ashok Kumar, Prem Kumar, Vijay Kumar, Manohar Kumar and others on 31.05.2021 due to which the petitioners suffered injuries. Information in this regard was given to the police by both the parties. The medical examination of the parties was purportedly conducted. As per the medico legal report, petitioner No.1-Raman Mahajan stated to have sustained three injuries while petitioner No.2-Nitin Mahajan had sustained four injuries. Injury Nos.2 and 3 suffered by petitioner No.1 were declared simple in nature that have been caused with a blunt weapon while the nature of injury No.1 was kept pending subject to X-ray report. The injuries Nos.1 to 3 suffered by petitioner No.2 were declared simple in nature while injury No.4 was kept pending subject to X-ray report.

Similarly, Ashok Kumar from the other side had sustained three injuries. Injuries Nos.1 and 2 sustained by this person were declared simple and injury No.3 was kept pending subject to X-ray report. The other accused-Prem Kumar had also sustained five injuries which were declared

simple in nature caused by a blunt weapon. Injury No.3 sustained by Ashok Kumar was also kept pending subject to the X-ray report that was later on declared simple in nature. It is averred that the X-ray report of petitioner No.2-Nitin Mahajan was also conducted at the Civil Hospital, Amritsar and as per the report, it showed no bone injury in the films. Thus, injury No.4 sustained by petitioner No.2-Nitin Mahajan was found to be simple in nature. Thereafter, an application was submitted by petitioner No.2-Nitin Mahajan whereupon a Board of Doctors was constituted by the Principal, Government Medical College, Amritsar for re-examination of injuries of the petitioners. The re-examination was thereafter conducted and the injuries were declared simple in nature even by the Board of Doctors. The X-ray report and report of the Board of Doctors had also been appended by the Investigating Agency along with the aforesaid status report. As the case was noticed to be one of an altercation outside the shop of the petitioners in the street and the allegation of snatching of gold chain of the petitioner was also not substantiated, hence, GDR No.27 dated 10.06.2021, GDR No.17 dated 14.06.2021 and GDR No.30 dated 19.10.2021 were recorded, since non-cognizable offences under Sections 323, 506, 34 IPC were *ex facie* made out against both the parties.

The aspects of disputed facts were noted by this Court on 01.08.2022 and the deponent of the affidavit dated 28.07.2022-Sh. Surinder Singh, Assistant Commissioner of Police, Central, Amritsar was directed to remain present in the Court on the adjourned date. Thereafter, a subsequent status report was filed before this Court dated 29.08.2022 wherein it has been mentioned that the first X-ray/opinion and the subsequent opinions of the doctors were appended with earlier short reply inadvertently for which

an unconditional and unqualified apology was tendered. It was also stated in the said affidavit that SHO of Police Station D-Division, Amritsar was directed to produce the X-ray film which was prepared with respect to injury No.4 of petitioner No.2-Nitin Mahajan by the Radiologist of the Civil Hospital, Amritsar before obtaining subsequent opinion dated 01.06.2021. A report was submitted by SHO, Police Station D-Division, Amritsar to the effect that ASI Harbinder Singh No.3404/ASR, Police Station D-Division, Amritsar had dealt with the dispute involved in the present petition and that he had received the opinion dated 01.06.2021 along with X-ray report and X-ray film on 10.06.2021, but only the subsequent opinion dated 01.06.2021 and X-ray report are available and that the X-ray film has been misplaced on account of negligence and carelessness. A regular departmental enquiry was ordered to be initiated against ASI Harbinder Singh No.3404/ASR vide order dated 22.08.2022 by the Commissioner of Police, Amritsar. It was further pointed out that even though the first X-ray film may have been misplaced, however, the re-examination of injury No.4 suffered by petitioner No.2-Nitin Mahajan was conducted by the Board of Doctors and two X-ray films were prepared at the time. The second X-ray report dated 16.08.2021 was placed on record along with the earlier short reply and the same are still available in the record of Police Station D-Division, Amritsar. The said short affidavit was noticed by this Court on 30.08.2022. Subsequently, another status report has been filed by way of affidavit dated 29.11.2022 in which it is reiterated by the Assistant Commissioner of Police that at the time when the Board of Doctors conducted the re-examination of petitioner No.2-Nitin Mahajan, original previous medical legal report of petitioner No.2 vide MLR No.9/VS/CHASR/202/21 dated 01.06.2021 was available

with the Investigating Officer-ASI Harbinder Singh and the same was duly produced before the Board of Doctors as well and the opinion regarding injury No.4 had been given by the Board of Doctors after examining the original medical record and the same was misplaced thereafter by the Investigating Officer for which the departmental proceedings had already been instituted.

A further response was obtained from the doctors of Civil Hospital, Amritsar to the effect as to whether the injury of petitioner No.2-Nitin Mahajan could heal during the period from 31.05.2021 to 16.08.2021 and the doctor has reported that the final opinion regarding injury No.4 i.e. nature, duration and kind of weapon has already been declared. The said query has been recorded by the doctor to be answered only in the Court. Statement of petitioner No.2-Nitin Mahajan was again recorded on 07.10.2022 by ASI Charanjeet Singh, at Police Station D-Division, Amritsar and on the basis thereof FIR No.128 dated 07.10.2022 under Sections 451, 323, 148, 149 IPC, Police Station D-Division, Amritsar had been registered against Prem Kumar, Rishab, Ashok Kumar, Vijay Kumar, Manohar Lal, Shivam and Aniket. The accused persons are stated to have entered into the shop of the petitioners and given beatings to the petitioners outside the shop.

Learned counsel appearing on behalf of the petitioners contends that the respondents/police officials have misplaced the evidence of the present case with an ulterior motive and to extend undue benefit to the assailants and they had filed affidavits to suppress the truth. She further submits that offence under Section 452 IPC as well as Section 325 IPC are made out, however, the necessary Sections have not been added by the respondents in the said FIR.

It is noticed that the respondents have misplaced the X-ray film pertaining to petitioner No.2-Nitin Mahajan as may have suggested a case for making out an offence under Section 325 IPC. It is the case of the Investigating Agency and the affidavit filed by the Assistant Commissioner of Police himself that the Board of Doctors had examined the first MLR before giving their opinion and that the same was handed over in original to the officer/ASI Harbinder Singh No.3404/ASR on 10.06.2021 and he has misplaced the same thereafter. The specific query raised by the respondent-Investigating Agency to re-ascertain the nature of injury and its duration has been responded to by the doctors with an opinion that the same would be answered in the Court only. Hence, the said issue would require leading of evidence by the parties. Notwithstanding the fact that the medical record has been misplaced, however, the ancillary/secondary evidence in support of any such conclusion can be relied upon by the prosecution to put-forth their case. Since the departmental proceedings have already been instituted for the acts of carelessness/negligence against the defaulting official, it would not be appropriate to indulge further into the said issue which is pending before competent authority.

In so far as any subsisting grievance of the petitioners in relation to non-addition of the charges that are made out, if any, is concerned, the petitioners would be at liberty to raise all those issues before the competent Court of law for seeking addition/alteration of the charges that may have been mentioned in the FIR/or final report submitted by the Investigating Agency. The Investigating agency/Court shall take a decision thereupon on the basis of evidence and in accordance with law.

The present petition is thus disposed of as not pressed, at this

stage, however with liberty to the petitioners to raise all pleas before the appropriate authority at an appropriate stage, in accordance with law.

January 17, 2023
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No