

CRM-M-43646-2021 (O & M)

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

Date of decision: 29.11.2023

(1) CRM-M-43646-2021 (O& M)

Upmanyu and ors.

.... Petitioners

V/s

State of Haryana

...Respondent

(2) CRM-M-41238-2023 (O& M)

Rohit Kumar @ Bairwa

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arun Sharma, Advocate,
for the petitioners in both the petitions.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of two criminal miscellaneous petitions
i.e. CRM-M-43646-2021 and CRM-M-41238-2023 as they arise out of the
same FIR.

2. For the sake of convenience, the facts are being taken from the
petition bearing No. CRM-M-43646-2021.

3. The prayer in the present petitions under Section 482 Cr.P.C. is
for quashing of FIR No.0200 dated 13.09.2020 under Section 160 IPC
registered at Police Station B.P.T.P. District Faridabad, Haryana and all

4. The brief facts of the case are that the aforementioned FIR came to be registered with the allegations that five persons were creating trouble on the road while speaking loudly and were causing obstructions to the general public in traffic. They were nabbed by the police present at the spot and disclosed their names as Upmanyu, Sanjay (petitioners No.1 and 2 in CRM-M-43646-2021), Priyanshu, Rohit Kumar (petitioner in CRM-M-41238-2023) and Amit (petitioner No.3 in CRM-M-43646-2021). They had, thus, committed the offence under Section 160 IPC.

5. The learned counsel for the petitioners contends that the allegations as levelled in the FIR that the accused were speaking loudly and were causing obstructions to general public in traffic are baseless. However, taking the allegations to be correct, no offence under Section 160 IPC was made out. In fact, all the accused-petitioners and one Priyanshu were friends. There was absolutely no evidence of any fighting having taken place in public, public peace being disturbed or traffic being obstructed. He further contends that speaking loudly by itself would not constitute an offence. Even as per the list of witnesses included in the report under Section 173 Cr.P.C., no independent witness was examined and statement of only one witness i.e. Constable Monu was recorded. The subsequent improvement in the replies submitted by the State to the effect that the five persons were spotted rioting, shouting loudly, creating ruckus and committing affray thereby causing hindrance in traffic was nothing but improvement to the case of the prosecution in order to establish the commission of the offence. He, therefore, contends that absolutely no offence whatsoever was made out. Reliance is placed on the judgments in

‘Puran Chand versus The State 1963 PLR 813, C. Subbarayudu versus

State of A.P. 1996(3) CCR 245 and Kuldip Kumar and others versus State of Punjab (Crl. Misc. No.M-27872 of 2011 decided on 21.05.2012)’.

6. The learned counsel for the State, on the other hand, while referring to the reply dated 17.11.2021 (already on record in CRM-M-43646-2021) and the reply dated 28.11.2023 (filed in the Court today in CRM-M-41238-2023 and is taken on record) contends that on 13.09.2020, a police patrolling team present at World Street Mall, Sector 79, Faridabad spotted five accused who were rioting and shouting loudly thereby creating a ruckus and committing affray. Their behaviour was creating hindrance in the traffic and causing road blocks and a traffic jam. Therefore, the offence was clearly made out and the aforesaid FIR and all consequential proceedings arising therefrom are not liable to be quashed.

7. I have heard the learned counsel for the parties.

8. Before proceeding further, it would be apposite to examine the provisions of Sections 159 and 160 IPC. The same are reproduced hereinbelow:-

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

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

9. In ***‘Puran Chand versus The State, 1963 PLR 813’***, this Court has held as under:-

“3. In the present case there is nothing on the record to show that the accused successfully or even otherwise exchanged any blows. What we have on the record is that there was only

exchange of abuses. The exchange of abuses in my opinion, would not amount to an affray. Something more than a mere wordy quarrel is needed before a person can be convicted under this section. It would be enough if blows are aimed, whether those prove to be successful or otherwise. But even that is lacking in this case. The learned Sessions Judge while recommending this case to this Court relied on Ganesh Das v. Emperor, AIR 1928 Lahore 813(1), and Jagannath Sah v. Emperor, AIR 1937 Oudh 425. In addition to the above authorities, Atma Singh v. The State, AIR 1955 Punjab 191-57 P.L.R. 437, is also relevant to understand what is meant by the word 'fight' and the word 'affray'. The petitioner's counsel also cited The Crown v. Atma Singh, AIR 1926 Lahore 412-27 P.L.R. 176, but that case is not relevant to the issue before us. The learned counsel for the State, on the other hand, cited In re. Muthuswami Iyer, AIR 1937 Madras 286, but this authority has no bearing on the point before us. This authority only tells us what is meant by a public place, and what is sufficient proof of breach of public peace”.

In ‘**C. Subbarayudu versus State of A.P. 1996(3) CCR 245**’, the Andhra Pradesh High Court has held as under:-

“3. The accusation against the petitioner and other is to the effect that on 26-6-1992 the accused of 'A, party and 'B' party, containing two persons each, were abusing, and kicking each other causing breach of peace. The alleged plea of guilty, by the petitioner and accused No. 2 was not recorded by the Spl. Judl. II Class Magistrate. Under Section 252 Criminal Procedure Code, 1973 a Magistrate shall record the plea of guilty as nearly as possible in the words used by the accused. No such attempt has been made by the learned Magistrate. This is a mandatory requirement, violation of which renders the conviction illegal. Before convicting an accused on the basis of 'plea of guilty,' a Magistrate should take the following

precautions. He should ascertain whether all the copies of the documents on which prosecution relies have been supplied to the accused. Thereafter sufficient time has to be allowed for perusing them. He should satisfy himself that the allegation in the accusation do constitute an offence. He should question the accused on all the ingredients of the offence to find out whether the accused understood the nature of the offence. The plea of guilty should be recorded in the words of the accused. He should find that the plea of guilty was free and voluntary. The provisions of the Section are mandatory as held in Mahant Kaushalya Das v. State of Madras, AIR 1966 Supreme Court 22; Podan v. State of Kerala, 1962 1 Cri LJ 339 explains the offence of Affrary as a fight i.e., a bilateral act in which two parties participate and it will not amount to an affray when the party who is assaulted submits to the assault without resistance. Again, there must be a definite disturbance of the public peace due to the fight in the public place to make the offence affray, mere causing inconvenience to the public is not sufficient. These necessary ingredients are lacking in the accusation. The contention urged before me is that the petitioner has not pleaded guilty but only stated the occurrence, of an incident involving himself and accused 3 and 4. In the absence of the record of the words of the petitioner it is not possible to hold that the petitioner pleaded guilty to the offence. Other requirements, stated above, have also not been observed in this case, by the Magistrate. The case smacks of undue haste. The order passed by the learned Magistrate therefore, suffers from serious lacunae and has to be set aside and the petitioner; acquitted.

4. Accordingly, the order of the Spl. Judge, II class Magistrate, Nandyal, in STC. No. 571/92 is set aside. The petitioner is acquitted of the offence under Section 160 Indian Penal Code The Crl. Revision Case is therefore, allowed”.

In '*Kuldip Kumar and others versus State of Punjab (Crl. Misc. No.-M-27872-2011 decided on 21.05.2012)*', this Court has held as under:-

"The word "affray" is defined in section 159 IPC. It literally means fighting in a public place. To be more specific, it can be said that when two or more persons, by fighting in a public place, disturb the public peace, they are said to commit affray. The essential ingredient of this offence is fighting in public place.

In Puran Chand's case (supra), the parties were exchanging abuses in a public place. Still it has been held that it would not amount to an affray because something more than a mere wordy quarrel is needed before a person is convicted for offence under section 160 IPC. Though, the occurrence was different in C.Subbarayudu's case (supra), yet there were two parties and one party assaulted the other. Since the other party submitted to the assault without resistance, it was held that offence of affray was not committed.

In the present case, the two parties were nowhere together. They were not even exchanging hot words what to talk of exchanging blows. Therefore, they cannot be said to be fighting in a public place, which is the essential ingredient of the offence of affray as defined under section 159 IPC and made punishable under section 160 IPC. When DSP Satish Kumar Malhotra himself says in his reply that the parties were about to commit affray, then it cannot be said that before they were apprehended, they had committed the offence of affray. Therefore, I accept the petition and quash FIR No. 49 dated 8.6.2011 registered at Police Station Rahon, District S.B.S. Nagar for an offence punishable under section 160 IPC alongwith all consequential proceedings arising therefrom".

10. Coming back to the facts of the instant case, a perusal of the

loudly and causing obstructions to general public traffic. Even the said allegations if taken to be true would not constitute an offence under Section 160 IPC. There is nothing on record to show that the accused successfully or even otherwise exchanged any blows or hot words. There is no independent evidence on record to establish that there was a disturbance of public peace due to the fight in a public place. Merely causing inconvenience to the public cannot be considered to be sufficient to constitute the offence of affray. Even the improved version coming forth in the replies of the State that the five persons were spotted rioting, shouting loudly and created hindrance in the traffic, in the absence of any independent evidence would not make out any offence.

11. In view of the aforementioned discussion, the continuance of the proceedings emanating out of the FIR No.0200 dated 13.09.2020 under Section 160 IPC registered at Police Station B.P.T.P. District Faridabad, Haryana, would be nothing but an abuse of the process of the Court.

12. Therefore, both the petitions are allowed and the FIR No.0200 dated 13.09.2020 under Section 160 IPC registered at Police Station B.P.T.P. District Faridabad, Haryana and all subsequent proceedings arising therefrom stand quashed qua the petitioners.

(JASJIT SINGH BEDI)

JUDGE

November 29, 2023

sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No