

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

CRM-M-51518-2022 (O&M)

Date of Decision: 11.04.2023

RAJNISH VASUDEVA

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. R. C. Sharma, Advocate
for the petitioner.

HARSH BUNGER, J.

Petitioner has filed the present petition, under Section 482 of the Code of Criminal Procedure, for setting aside the impugned order dated 01.08.2022 (Annexure P-4), passed by learned Additional Sessions Judge, Kapurthala as well as order dated 07.09.2016 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Kapurthala, vide which, complaint No.6416 dated 03.02.2012 (Annexure P-1) filed by the petitioner under Sections 323, 324, 342, 349, 427, 452, 506, 148 and 149 of the Indian Penal Code (45 of 1860) has been dismissed qua respondents No.2 to 12.

2. Succinctly, the present petitioner filed a complaint before the Court of Judicial Magistrate 1st Class, Kapurthala, stating that the complainant and accused are residents of Harnam Nagar, Kapurthala, where the complainant is running a Charitable Institution namely "*Himanshu Vasudeva Health Solution*" for treating the ailing and sick people, due to which there was heavy rush as the institution start at about 8 0' Clock till

5 O' clock in different batches. It was stated that although the complainant had made proper arrangement for the sitting of the persons in the street but the accused persons always taunted the people and abused the complainant. It was alleged that on 12.07.2011, the accused persons along-with certain Goonda elements entered the Health Institution at about 3.30 p.m., and in the absence of the petitioner-complainant, they started abusing the staffmembers working over there and the complainant. It was stated that the father of the complainant (aged about 95 years) was residing on the first floor of the said building and later on the accused persons also abused and pulled his father from bed and dragged him upto the stairs and threatened to kill him. It was alleged that the maid servant namely Ram Wanti who came outside from the kitchen from the second floor raised hue and cry and took away the father of the complainant into the room and which she locked from inside. All the accused started beating the door and then gave *danda* blows on the door and extended threats. Then the accused persons are stated to have come down and in the presence of staff members namely Sunil Kumar, Gurmit Kaur, Amandeep Kaur, Manju, Hena, Chandra, Sukha, Manju Sharma and in the presence of public started throwing away machines meant for the treatment of the ailing persons. It was alleged that they broke one machine while the public there saved the other machines. It is further alleged that the accused along-with sticks also carried away five machines and while leaving they threatened the staff members that they will also kill the complainant and if the staff members reported this matter to the police they will face dire consequences. It was stated in the complaint that the matter was reported to the police however no action was taken and on the contrary, the police officials who are in connivance with the accused

persons, got registered false FIR against the petitioner-complainant under Sections 452/34, 323/324 IPC. Accordingly, the petitioner filed a complaint against them under Sections 323/324/342/379/427/452/ 506/148/149 IPC.

3. The petitioner examined himself and other witnesses namely Ramwati, Amandeep Kumar and Chandra, in support of its case.

4. The trial Court after appreciating the evidence on record, dismissed the complaint filed by the petitioner vide its judgment dated 07.09.2016.

5. The petitioner challenged the abovesaid judgment dated 07.09.2016 by filing a revision petition under Section 397 Cr.P.C. before the Court of Additional Sessions Judge, Kapurthala; however the said revision petition also came to be dismissed by learned Additional Sessions Judge, Kapurthala vide its judgment dated 01.08.2022.

6. Now, the petitioner has filed the instant petition under Section 482 Cr.P.C. impugning the order dated 07.09.2016 (Annexure P-2) passed by the trial Court and also the order dated 01.08.2022 (Annexure P-4) passed by learned Additional Sessions Judge, Kapurthala.

7. I have heard learned counsel for the petitioner and perused the paper-book.

8. Here it would be appropriate to refer to few judicial pronouncements.

9. In '*Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479*', Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in

a judgment of acquittal, by observing as under:

“An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

10. *In State of Rajasthan v. Naresh @ Ram Naresh, 2010(1)RCR (Criminal) 128*, Hon'ble Apex Court laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused..."

11. In *'Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748'*, Hon'ble Supreme Court held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

12. Coming to the facts of this case, the trial court after appreciating the evidence on record, dismissed the complaint filed by the petitioner by observing as under:

“4. I have heard the contentions of ld. counsel for the complainant and have gone through the case file. The main contention of the complainant is that all the accused in connivance with each other committed offence punishable under Sections 323/324/342/379/427/452/506/148/149 of Indian Penal Code. However, complainant has examined himself as CW1, Ramwati as CW2, Amandeep Kumar as CW3, Chandra as CW4 to prove his assertion. Perusal of testimony of his witnesses it has come on record that

neither complainant nor his witnesses have seen the accused causing injuries on the person of father of the complainant. The allegations of the complainant are that on 12.7.2011 at about 3.30 p.m accused abused and pulled the father of the complainant who is 95 years of age and all the accused pulled him down from bed and dragged him up to the stairs and also gave threat to kill him. However, it has not come on record that 11 accused pulled the father of the complainant from the third floor and who dragged him pulled up to stairs. Moreover, Ramwati who is servant of the complainant has categorically stated in her statement that she was working in the kitchen when she heard noise from the ground floor and son of Dwarka come up to first floor and orally abused father of complainant and throw him from bed. She was working in the second floor and when she reached the spot father of complainant was already lying on the floor and then she layed father of complainant on the bed and locked him which clearly shows that she has not witnessed the occurrence as she was working on second floor. She only heard the noise and she come down and saw father of the complainant on the floor. Same is the version of CW3 Amandeep Kaur who was working on the ground floor and had not witnessed the occurrence on first floor. Moreover, father of complainant was of 95 years of age at the time of incident and fell from the bed could be on natural event at the age of 95 years. Moreover, there is no particular injury pleaded or proved on the person of father of the complainant. There is no averment to the effect that he sustained any injury at the time of dragging. Moreover, the allegation of dragging to the stairs is self contradictory as Ramwati found father of the complainant on the floor of room not near the stairs. There is no medical record of any injury sustained by

father of the complainant. No document of doctor/MLR has come on record nor any doctor has been examined to prove the same. Further injured has not come forward to prove this version. Neither any reason has been mentioned by the complainant for non examination of this key witness nor any document has come on record showing the complainant inability to examine this witness. Hence, no offence punishable under Sections 323 and 324 IPC is made out.

5. *As per the discussion above and the statement of Ramwati servant of complainant when she reached on first floor she herself locked father of the complainant in the room. Hence, no offence punishable under Section 342 IPC is made out.*

6. *There is no prima facie evidence on record to show that which accused criminally intimidated father of complainant nor any wording particular has come on record which was used any of the accused to threaten the father of the complainant or other employees of the complainant. Hence, no offence punishable under Section 506 IPC is made out.*

7. *There is also allegation made by complainant that some machines were stolen by the accused. However, complainant has prima facie failed to prove on record which particular machine was stolen. There are only general allegations that some machines were broken and some were stolen. However, complainant has failed to prove on record his ownership and possession of the articles alleged to be stolen. No proof of stolen articles and total absence of any detail about machines which were stolen. Hence, no offence punishable under Section 379 IPC is made out.*

8. *In light of above discussion, complainant has failed to prove that accused entered into the premises of the complainant and committed any offence. It is*

admitted case of the complainant that he is running a Charitable Institution in the memory of his son who was mysteriously murdered, where he is treating the ailing and sick people and this service provided free to the public. Hence, the ground floor of the house of the complainant was opened to public. Even if, accused were present on the ground floor then it cannot be held that they have trespassed the premises against the wishes of the complainant, who himself has opened the ground floor to the public. Hence, no offence punishable under Section 452/148/149 IPC is made out.

9. *Moreover, the complainant has himself brought on record the case FIR No.110 of 23.6.2011, under Section 452/323/324/506/427/34 IPC, PS City, Kapurthala, titled as “State Vs. Rajnish Vasudeva &Anr.” decided on 29.07.2016, which clearly shows that there is previous enmity between the parties. The present complaint seems to be counter blast of said FIR lodged against him...”*

13. Further, the Revisional Court has again re-examined and appreciated the evidence on record and dismissed the revision petition filed by the petitioner vide judgment dated 01.08.2022, by holding as under:-

“...The record after hearing the arguments has been perused and it is found that the grounds of the revision as per version of the revisionist/ complainant are that on 12.07.2011 at about 3:40 P.M. the respondents/ accused had entered into his charitable institute run by him under the name and style as “Himanshu Vasudeva Health Soluction” and had hurled abuses to staff members working there, had dragged and thrashed to his 95 years old father, had damaged the property, stolen away five machines and threatened the staff members to face dire consequences if reported the matter to the police and the staff members had moved two

applications before police but to no avail. The learned counsel for the revisionist/complainant has argued as per grounds of revision that the order under revision is wrong in law and is contrary to the facts of the case and the learned trial court has thus erred in not summoning the respondents/accused when there was lot of said oral and documentary evidence which has proved that the respondents/accused had committed offences under sections 323/324/342/379/ 427/ 452/506/148/149 of IPC and the learned trial court had wrongly held that no any such offence was committed by ignoring sufficient evidence brought on the record by the revisionist/complainant and the learned court had erroneously disbelieved the evidence produced by the revisionist/complainant and has vehemently argued that there was sufficient ground for proceeding further with the complaint against the respondents/accused because at that stage the learned trial court had to see only this much as to whether any prima-facie case for issuance of process against the respondents/ accused was made out or not, as per preliminary evidence led by the revisionist/complainant on the record then by examining himself and by examining material witnesses and from their testimony it is clear that a prima-facie case has been made out to put the respondents/accused on trial and lastly prayer has been that the impugned order, being nonspeaking and contrary to the law, is liable to be set aside to proceed against the respondents/accused as per views taken in Shingara Singh Vs. State of Punjab 2000(1) RCR(Crl.) 123, Smt. Rakesh Devi Vs. State of UP 2002 (2) RCR(Crl.) 157, Lajwanit @ Bimla Vs. State of Haryana and Others 2014(1) RCR (Crl.) 929, and Siblu Vs. Mohinder Singh 2002(1) RCR (Crl.) 165, referred by the learned counsel for the revisionist/complainant in support of the said case of the

revisionist/ complainant. The contention of the learned counsel for the respondents/ accused on the other hand is that no any prima facie case against the respondents/accused is made out from the face of facts and evidence adduced on record and the complaint was liable to dismissed and was rightly dismissed and in terms of which, the record has been perused and it is found that no any prima facie case as alleged in the complaint by the revisionist/complainant was/is made out against the respondents/ accused, as observed in detail in the impugned order to the effect that there was no any evidence that some of his machines were stolen by the respondents/accused and the revisionist/complainant had also failed to prima-facie establish as to which such machine had been stolen by the respondents/accused because there were only general allegations that some machines were stolen and some were broken and the revisionist/ complainant had failed to prove his ownership over all the said alleged machines and as per allegations, his old aged father was dragged up to stairs but there is no any medical evidence on the record to establish his such plea because if a 95 years old man was made fallen from the bed and was also dragged for some distance, then he must have suffered some injuries in the shape of abrasion or scratches and resulting of which, the offence punishable under section 379,323,324 of IPC was not made out and the ground floor of the premises of the charitable Institution run by the revisionist/complainant for treating the public at large free of cost in the memory of his son mysteriously murdered, was open for public by the revisionist/complainant and the offences punishable under section 452/148/149 of IPC was not made out and the FIR no.128 registered under sections 325/34 of IPC in the police station City Kapurthala was

against the revisionist/complainant and others and the same shows that the complaint case was counter blast of the same and other FIR no.110 registered under sections 323/324/452/506/34 of IPC also in the police station City Kapurthala clearly shows that revisionist/complainant was nourishing grudge against the accused/respondents and the complaint was not tenable to proceed against the respondents/accused...”

14. Upon considering the findings returned by the learned Courts below on the touchstone of the legal position as indicated in foregoing paras, I do not find any illegality or infirmity with the impugned judgment(s)/order(s), apparent on the face of the same, which may call for any interference by this Court. No evidence has been led to show that which of the particular machines of petitioner-complainant were stolen. Petitioner-complainant had failed to prove his ownership qua the alleged machines. Further, no medical evidence has been led to substantiate that the old aged father of the petitioner-complainant was dragged upto stairs. Still further, as per the own case of petitioner-complainant, the ground floor of the premises of petitioner-complainant was open to public and even if the respondent-accused were present on the ground floor then it cannot be held that they trespassed the premises.

15. The impugned judgment(s)/order(s) are certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. No procedural irregularity or illegality has been pointed out. Impugned judgment(s)/order(s) are based upon proper appraisal and appreciation of evidence and as per law.

16. Therefore, there is no merit in the present petition and the same

is accordingly dismissed.

17. All pending application/s, if any, shall stand closed.

April 11th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No