

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50827-2023 (O&M)
Date of decision : 11.12.2023

BHARAT MEHTA

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

Affidavit of Shatrujeet Kapoor, Director General of Police, Haryana, Panchkula, dated 8th of December, 2023 has been filed today in Court, which is taken on record.

2. On 15th of November, 2023 following order was passed :

“FIR is of the year 2017. From the record it is discernable that though report under Section 173(2) Cr.P.C. was filed in the year 2018, an application was moved for further investigation under Section 173(8) Cr.P.C. by the prosecution. However, despite having spent 5 years on investigation the agency is still not able to find as to whether offence Sections 367 & 397 IPC are made out or not. The aforesaid facts do reveal sorry state of affairs.

Status report filed on the last date on behalf of respondent Nos.1 to 4 by way of affidavit of Jagat Singh, HPS, Deputy Superintendent of Police (HQ), Sirsa has only added to the confusion.

Adjourned to 11.12.2023.

Meanwhile, the Director General of Police, Haryana is directed to file an affidavit in this regard on the next date.”

3. In compliance thereof, the deponent before this Court has stated that an SIT was constituted for further investigation. The investigation carried out by the SIT and the result thereof as stated in the affidavit read as under :

- “(x) That during further investigation carried out by the SIT, following aspects have been investigated :-
- a) The complainant initially moved his compliant in the matter on 11.11.2017 to P.S City Sirsa with the allegations of kidnapping, physical assault and trespassing into his shop, wrongful confinement, criminal intimidation and theft upon the accused named Subhash Chander, Mohit, Suman and Usha Rani and apart from this allegation were also levelled against 5-6 unknown persons. However, no allegations of Rs. 25000/- were initially levelled against any accused.
 - b) That the complainant again moved a complaint dated 13.11.2017 with fresh allegations of theft of Rs. 25000/- by accused Subhash and one new accused was impleaded in the complaint namely Devraj upon which the present FIR was registered.
 - c) That as per allegations accused Subhash Chander had committed theft of Rs. 25000/-, however after perusal of CCTV footage of the place of occurrence, it was revealed that the accused Subhash Chander on whom allegation of theft has been levelled had not even entered the shop of the complainant and when the local police went to the place of occurrence, accused Subhash was found present outside the place of occurrence without any weapon.
 - d) That the complainant has levelled allegations of physical

assault against the accused, However, no MLR of the complainant and his brother stated to be on the place of occurrence are available regarding the physical assault.

- e) That the mobile phones which are subject matter of theft have not been recovered from any accused and as per report of Cyber cell, the IMEI Numbers of these mobile phone are found inactive till today.
- f) That as per perusal of CCTV footage and photographs of the place of occurrence, three persons reached in front of the shop of the complainant, carrying an object with bend ends (resembling flex) and hence the allegations carrying deadly weapon by the accused was found to be false.
- g) That no recovery of mobile phone, deadly weapons and cash has been effected from any of the accused and in the disclosure statements of any of the accused, no act of theft or carrying of deadly weapons has been admitted by any of the accused.
- h) That there is no delay in the investigation as the matter in hand was sub-judice before the court of Ld. Area Magistrate since 01.07.2019 to 16.05.2023 for a total duration of 3 years and 10 months (as the application for re-investigation could not be decided by the Ld. court).

(xi) That a legal opinion on the basis of investigation carried by SIT and regarding applicability of Sections in the aforesaid FIR has been obtained from legal committee comprising of District Attorney, Sirsa and Deputy District Attorney's on 26.11.2023 wherein it has been opined that, ***"Sections 147,149,323,342,365,427, 452,506 and 120-B of IPC are made out against the accused persons and as far as offences under section 379 and 367 are concerned, no evidence qua commission of these offences has emerged, none of the facts as defined in section 367 were found to exist. It was alleged by the complainant that accused were carrying sharp edged weapons but during the course of investigation, these allegations were found incorrect hence section 148 and 397 of IPC are not***

attracted".

6. That it is submitted that as per investigation carried out by the SIT and Legal opinion tendered by the legal committee comprising of District Attorney, Sira and Deputy District Attorney's, section 379, 367, 148 and 397 IPC are not made out in the present case. Final police report qua the accused Mohit, Naresh and Sonu @ Ravinder has been submitted before Ld. Trial Court on 29.11.2023.”
4. At this stage Mr. Sanghi submits that the conclusion by SIT *prima facie* appears to be in teeth of the an inquiry conducted by the IG already on the record before the Trial Court. He prays for liberty to agitate *viz-a-viz* the same.
5. In view of above, the petitions stands disposed off with liberty as prayed for.

December 11, 2023
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No