

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

CRM-M-11528-2016
Reserved on: 23.01.2024
Pronounced on: 05.02.2024
2024: PHHC: 015142

PREM SINGH AND OTHERS

. . . . Petitioners

Vs.

GURPIAR SINGH

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. P.S. Ahluwalia, Advocate, for the petitioners.

Mr. Bhavyadeep Walia, Advocate, for the respondent.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioners pray for quashing of order dated 11.08.2012 (Annexure P2) passed by the Court of Id. Judicial Magistrate 1st Class, Patiala in a Criminal Complaint No.94-T/2010 dated 13.04.2006 titled '*Gurpiar Singh Vs. Prem Singh and others*', whereby petitioners have been summoned to face trial for offences punishable under Section 436 read with 511/447/147 read with 149/342/323/120B IPC. Under challenge is also the order dated 23.02.2016 (Annexure P4) passed by Id. Additional Sessions Judge, Patiala, whereby revision of the petitioners against the aforesaid order, has been partly allowed, rather than discharging petitioners qua all the offences.

2.1 Perusal of the paper-book reveals that complaint (Annexure P1) was filed by Gurpiar Singh (*respondent herein*) seeking prosecution of

as many as 15 accused for committing various offences under Sections 364/366/323/324/325/342/392/395/447/452/506/436/511/425/148/149/34/120B IPC. The 15 accused as arrayed in the complaint are in two sets. Ist 6 accused are police officials (*not before this court*); whereas accused No.7 to 15 are the private individuals, out of whom accused No.7 to 14 (*petitioners herein*) have approached this Court.

2.2 It was alleged that on 01.03.2006 at about 11 AM, complainant with his cousin Lakhwinder Singh son of Jit Singh, and nephew Lakhwinder Singh son of Mohinder Singh were cutting fodder in their fields, when SHO Harpreet Singh (accused No.1) accompanied by ASI Harpreet Singh (accused No.2), ASI Gurdev Singh (accused No.3), Constable Gurnam Singh (accused No.4), Constable Mastan Singh (accused No.5) and Reader Jaswant Singh (accused No.6) came there in their government vehicle. These police officials were accompanied by accused Sarup Singh, Jagrup Singh, Prem Singh, Jang Singh, Ranjit Singh, Lakhbir Singh @ Laddi, Gurmit Singh, Jasbir Singh and Gursewak Singh (Accused No.7 to 15), who had reached there in two Maruti cars. The complainant, his cousin and nephew were forcibly lifted by the accused in the police van and brought to the Police Station, Julkan. The occurrence was also witnessed by Jagdev Singh son of Kirpal Singh, and Joginder Singh son of Babu Ram.

2.3 It was alleged further that on reaching the Police Station, SHO Harpreet Singh gave stick blows on the foot of nephew of the complainant causing fracture in his foot. ASI Harpreet Singh slapped on the left ear of the nephew of the complainant injuring the ear to the extent that he cannot listen. Constable Mastan Singh gave a stick blow on left foot of

Lakhwinder Singh and Constable Gurnam Singh gave fist blow on his nose. Reader Jaswant Singh gave fist blows in his thighs. When complainant requested them not to beat, then accused Laddi son of Sarup Singh (*accused No.7/petitioner No.6 herein*); and accused No.12-Lakhbir Singh son of Sarup Singh (*petitioner No.5 herein*), after picking the police sticks gave blows on thighs, knees and feet of the complainant, and SHO slapped on the right ear of the complainant, due to which blood started oozing out of his ear. Then all the accused forcibly put the complainant, his cousin and nephew behind bars without any reason and did not even allow the relatives and respectables of the society to meet them.

2.4 It was alleged further that on the next day (i.e. 02.03.2006), when relatives of the complainant, his cousin and nephew told the accused that they will raise voice against this violence before the higher police officers, the accused-police officials implicated the complainant, his cousin and nephew in a case under Section 107/151 CrPC. All the accused-police officials threatened the complainant, his cousin and nephew that in case any complaint was made against them, they will be killed in a false police encounter. They were released on bail by the Magistrate on 02.03.2006. However, as they came outside the Court and were talking to each other so as to take action against the accused-police officials, they were again lifted and taken to Police Station, Julkan and confined there the whole night.

2.5 On 03.03.2006, the relatives of the complainant got them released from the police station, Julkan with great difficulty and got them admitted in the Rajendra Hospital, Patiala, where medical examination of the complainant, his cousin and nephew was conducted. It was also alleged that at the time when complainant, his cousin and nephew were kidnapped

by accused No.1 to 6 in connivance with accused No.7 to 15, one gold chain of 2 tola, 1 gold ring and ₹900 in cash were also snatched by accused No.1 to 6 and they obtained signatures of the relatives of the complainant on some blank papers. Complainant and his relative remained admitted in the Government Hospital, Patiala from 03.03.2006 to 06.03.2006.

2.6 Complaint narrated further that root cause of the atrocities committed by the accused upon the complainant and his relatives was that his father had earlier filed a civil suit against accused No.8-Sarup Singh in District Court, Patiala regarding hindrance being created by the accused in the passage leading to the house of the complainant and the Court had granted stay in favour of the father of the complainant. It was alleged further that accused No.7 to 15, in connivance with accused No.1 to 6, wanted to block the passage leading to the house of the complainant, regarding which even a complaint had been made on 27.02.2006 by father of the complainant to Sr. Superintendent of Police, Patiala, which was marked to Police Station, Julkan, Patiala.

2.7 It was alleged further that on 27.02.2006, after refusing to accept the summons of the Court, accused No.7 to 15, armed with various kind of weapons and also holding two canes of kerosene oil and accompanied by other unidentified persons holding guns, had come in front of house of the father of the complainant, so as to forcibly erect a wall on the passage with intention to block the same, despite status quo order passed by the Court. Father of the complainant restrained them from doing so. Many persons gathered and father of the complainant and his family members were rescued. It was also alleged that accused Lakhbir Singh and Gurmeet Singh, holding two canes of kerosene oil had poured the same on

the door of the house of the father of the complainant with an intention to set the house on fire, but could not succeed in doing so, as the matchstick did not ignite. Complaint to that effect was also made by father of the complainant on 27.02.2006 to SSP, Patiala.

2.8 With all the aforesaid allegations, complaint was filed seeking prosecution of all the 15 accused under various provisions of IPC.

3. After recording preliminary evidence, ld. JMIC, Patiala vide order dated 11.08.2012 (Annexure P2) observed that no case was made out warranting the summoning of accused No.3-ASI Gurdev Singh and so, dismissed the complaint qua him. Accused N: 1,2,4,5 & 6 were directed to be summoned to face trial for committing offences under Sections 365/323/325/342 & 506 IPC. In respect of incident dated 27.02.2006, accused No.7 to 15 were directed to be summoned under Section 436 read with Section 511 IPC; whereas all the accused were ordered to be summoned for offences under Section 147/447 read with Section 149 IPC. Accused No.7 to 15 were further directed to be summoned for offences under Sections 342 and 323 IPC, whereas all the accused were directed to be summoned under Section 120B IPC as well. Complaint was dismissed qua Sections 392 and 395 IPC.

4. Accused No.7 to 15 as arrayed in the complaint Annexure P1 (*i.e. petitioners herein and Ranjit Singh*) filed revision petition Annexure P3 against the aforesaid summoning order dated 11.08.2012. In the meantime, ld. JMIC had committed the case to the Court of Sessions for trial, as offence under Section 436 read with Section 511 IPC was also involved being trial by court of sessions, for which accused No.7 to 15 had

been summoned. A separate revision was filed by accused No.1- Harpreet Singh, SHO of Police Station, Julkan, challenging the summoning order.

5. Both the revisions i.e. one filed by accused No.1-Harpreet Singh, SHO of Police Station, Julkan, and the other filed by accused No.7 to 15 were considered together along with charge in the case as committed by the JMIC.

6. Ld. ASJ, Patiala vide order dated 23.02.2016 (Annexure P4), found that none of the witnesses examined by the complainant in preliminary evidence had testified anything regarding the incident of 27.02.2006 and as such, no case under Section 436 read with Section 511 IPC was made out against the accused No.7 to 15. As such, the revision filed by accused No.7 to 15 was partly allowed to that extent. Revision filed by accused No.1 - Harpreet Singh, SHO was rejected. The impugned summoning order was modified to the extent that it was set aside relating to the summoning of accused No.7 to 15 for offences under Section 436 read with Section 511 IPC, though these accused were asked to face trial for the remaining offences. Since, it was observed that offence under Section 436 read with Section 511 IPC was not made out, so case was sent back to the Id. Magistrate to proceed further with the trial, in accordance with law.

7. It is the aforesaid order dated 23.02.2016 of Id. ASJ, Patiala, which along with the summoning order dated 11.08.2012, passed by the Id. Magistrate, has been assailed by way of present petition.

8. The short submission made by Id. counsel for the petitioners before this court is that the complaint is with regard to two occurrences - one relating to 27.02.2006 and the other relating to 01.03.2006. It is contended that allegations regarding the occurrence of 27.02.2006 were

against accused No.7 to 15 i.e. petitioners & Ranjit Singh; whereas allegations pertaining to the occurrence of 01.03.2006 were only against the police officials i.e. accused No.1 to 6. Ld. counsel contends that once ld. Additional Sessions Judge, found that occurrence of 27.02.2006 was not proved due to lack of any evidence whatsoever in support of that incident and partly allowed the revision qua offence under Section 436 read with Section 511 IPC, so, accused No.7 to 15 i.e. petitioners & Ranjit Singh could not be asked to face trial for the other offences as well.

9. Refuting the aforesaid contention, ld. counsel for the respondent-complaint submits that petitioners have been asked to face trial for the remaining offences under Sections 342/323/120B IPC besides 147/447/149 IPC, for the occurrence of 01.03.2006 and not with regard to the occurrence of 27.02.2006 and therefore, this petition deserves to be dismissed.

10. I have considered submissions of both the sides and have appraised the record.

11. Perusal of the complaint would reveal that first occurrence is alleged to have taken place on 27.02.2006; whereas subsequent occurrence involving the police officials along with the accused is alleged to have taken place on 01.03.2006 followed by some of the allegations pertaining to 02.03.2006.

12. In the alleged occurrence of 27.02.2006, as evident from para No.8 of the complaint (Annexure P1), the allegations are only against accused No.7 to 15. These allegations pertain to trespassing into the house of the father of the complainant and attempt to pour kerosene oil on the same with an intention to set it on fire.

13. In the preliminary evidence, complainant-Gurpiar Singh, his nephew Lakhwinder Singh, father Baldev Singh and cousin Lakhwinder Singh made statements and as rightly observed by Id. ASJ in his order dated 23.02.2016, none of these witnesses testified anything regarding the occurrence of 27.02.2006. As such, once the occurrence of 27.2.2006 is not proved, so summoning of accused No.7 to 15 i.e., petitioners and Ranjit Singh has rightly been held to be not justified by the Id. ASJ for offences under Section 436/511 IPC. Further, as allegations for offences under Section 447/147 IPC also pertain to the occurrence of 27.02.2006, therefore, summoning of these accused, is not justified under these sections also.

14. However, as far as the occurrence of 01.03.2006 is concerned, it is not only against the accused police officials i.e. accused No.1 to 6, but also against the remaining accused including the petitioners, inasmuch as it was alleged that the accused No.1 to 6 i.e. police officials came in the fields of complainant in their Government vehicle followed by accused No.7 to 15 in two Maruti cars and that the accused forcibly lifted the complainant party and brought them to the police station. Allegations of giving beatings and causing injuries are not only against accused No.1 to 6, but also specifically against accused No.7-Gurmeet Singh @ Laddi and accused No.12-Lakhbir Singh s/o Sarup Singh, who had picked up the police sticks and had inflicted injuries upon the complainant. It is also the allegations that all the accused had forcibly put the complainant, his cousin and nephew behind the bars. These allegations made in the complaint (Annexure P1) have been testified by the complainant and his two relative witnesses during the preliminary evidence, as is evident from Annexure P5

(testimony of Gurpiar Singh), Annexure P6 (colly) (statements of Lakhwinder Singh s/o Jit Ram & Jagdev Singh) and Annexure P7 (statement of Baldev Singh).

15. Although the summoning order dated 11.08.2012, passed by Id. Magistrate, is not happily worded, as he did not specify as to for which occurrence, accused No.7 to 15 were liable to be summoned under Section 342 & 323 read with Section 120B IPC, but as these allegations pertain to only with regard to the occurrence of 01.03.2006, so obviously, summoning of these accused-petitioners, has been ordered for the occurrence of 01.03.2006 and not for the occurrence of 27.02.2006, which was not proved.

16. As such, the present petition is hereby partly allowed to the extent that petitioners will not be liable to face prosecution for the offences under Section 447/149 IPC. However, they will be liable to face prosecution for the offences under Sections 342 & 323 read with Section 120 B IPC.

Disposed of accordingly.

05.02.2024
Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No