

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-15310-2018
Reserved on: 07.02.2024
Pronounced on: 09.02.2024
2024:PHHC: 018467

VINOD KUMAR AND ANOTHER

.... PETITIONERS

Vs.

STATE OF HARYANA

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ravinder Malik, Advocate, for the petitioners.

Mr. Sumit Jain, Addl. AG, Haryana.

DEEPAK GUPTA, J.

By way of this petition, filed under Section 482 Cr.PC, petitioners pray for quashing of the FIR No.142 dated 16.03.2018 (Annexure P4) under Sections 182/186/193/115/211/34 IPC registered at Police Station Sadar, Rohtak and all the consequent proceedings arising therefrom.

2.1 Ld. counsel contends that on the complaint made by petitioner No.1 regarding a knife injury caused to petitioner No.2, FIR No.100 dated 15.03.2017 was registered at Police Station Sadar, Rohtak under Sections 323/324/506/307 IPC against one Naveen. After necessary investigation, challan was filed and Naveen was put to trial. During trial, the petitioners appeared in the witness box as PW4 and PW5 respectively. None of them supported the prosecution case and were declared hostile. Naveen was ultimately acquitted by the Court vide judgment dated 23.02.2018 (Annexure P3).

2.2 Ld. counsel contends that thereafter respondent moved an

application under Section 340 read with Section 195 CrPC for taking legal action against the petitioners for making false statement before the Court. However, the Court did not find any ground to prosecute any of the petitioners and so, the application was dismissed vide order dated 23.02.2018 (Annexure P2).

2.3 Ld. counsel contends further that despite the aforesaid order, respondent has lodged the present FIR No.142 (Annexure 4), at the instance of ASI Satbir Singh, though said ASI Satbir Singh is neither the prosecution witness nor the investigating officer nor he was aware of the proceedings before the trial Court in respect of FIR No.100 dated 15.03.2017 registered at Police Station Sadar, Rohtak against Naveen. Ld. counsel contends that false FIR No.142 has been registered against the petitioners, which is barred by Section 195 CrPC.

3. Ld. State counsel could not refute either the factual or the legal position as contended by counsel for the petitioners.

4. Section 195(1) CrPC reads as under: -

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance –

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section

471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.”

5. In the present case, impugned FIR No.142 (Annexure P4) has been lodged against the petitioners under Sections 182/186/193/115/211/34 IPC.

6. As is evident from Section 195 CrPC, reproduced above, no Court can take cognizance of any offence either under Section 182 or 186 IPC except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate. In the present case, the complaint in respect of FIR No.100 dated 15.03.2017 under Section 307 IPC, at Police Station Sadar, Rohtak against Naveen was not made to ASI Satbir Singh and so he was not competent to get the FIR No.142 registered either under Sections 182 or 186 IPC.

7. Similarly, taking cognizance of offence under Section 193 or 211 IPC is barred except on the complaint in writing of the Court or by such officer of the Court, as the Court may authorise. In this regard, State-respondent specifically moved an application under Section 340 CrPC before the Court concerned to initiate proceedings against the petitioners, as is evident from Annexure P1, but the Court dismissed the application after observing that no ground was made out to prosecute any of them under Section 340 CrPC. Thus, the Court clearly declined to take cognizance or to initiate proceedings under Section 195 CrPC. Therefore, lodging of the

present FIR to prosecute the petitioner-accused under Sections 193 or 211 IPC is clearly an abuse of process of law.

8. As far as Section 115 IPC is concerned, ld. State counsel is unable to convince this Court as to how this provision was attracted, in case petitioners had turned hostile during the trial of case No.100 dated 15.03.2017, registered at Police Station Sadar, Rohtak.

9. Consequent to the entire discussion, it is held that continuation of proceedings in the present FIR would amount to gross miscarriage of justice. As such, present petition is allowed. FIR No.142 dated 16.03.2018 (Annexure P4) under Sections 182/186/193/115/211/34 IPC registered at Police Station Sadar, Rohtak and all the consequent proceedings arising therefrom, are hereby quashed.

09.02.2024

Vivek

1. Whether speaking/reasoned?

2. Whether reportable?

Yes

No

(DEEPAK GUPTA)

JUDGE