

CRM-M-12844-2023
Date of decision: 20.01.2024

...PETITIONER

V/S

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

The prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of FIR No.0049 dated 12.03.2018 registered under Sections 452, 323, 506, 120-B of Indian Penal Code at Police Station Maqsudan, District Jalandhar Rural and subsequent proceedings arising therefrom.

FACTUAL BACKGROUND

2. The brief facts of the FIR are as under:

“That I am resident of above mentioned address and am Canadian NRI and am running my business. My mother is living at Jalandhar Kunj, for meeting her I often used to come from Canada to Jalandhar, around 1,112 months back I along with my wife Lakhwinder Kaur came to meet my mother at my house at Jalandhar Kunj, on dated 08.03.2018 time would be at around 3.00 hrs in a day, I was moving around in the Lawn of my house that three unknown youngsters who were wearing caps upon their heads came inside my house, out of them two youngsters encircles me and started assaulting me and one youngster made video of my assault, that upon raising clamour by me my relative who had come to my home Gurwinder Singh

son of Paramveer Singh and my wife Lakhwinder Kaur came out, upon seeing them all three persons fled from the spot that we also ran behind them then they started pelting bricks, stones upon us and fled in a White coloured Verna Car bearing Number PB-07-AQ-2515 parked outside and along with them one more Car was parked in which 4- 5 persons were boarding, Out of them I identified one person who was relative of Kuldeep Bansal namely Neelam Garg R/o Barnala, they sped away the car near from us and went from there while hurling vituperation and giving threats, that cause of grudge is that few days back Balraj Singh son of Satnam Singh R/o Talwandi Bharo Police Station Nakodar, District Jalandhar who is working as Travel Agent, come to my house along with him there was another unknown youngster, they have me threat and said stop messing with Kuldeep Bansal otherwise the consequences shall be very bad but on that day I didn't took it seriously, that the video made by these unknown youngsters were got viral of social media in order to defame me. That I also got issued MLR in respect of the injuries inflicted to me from Civil Hospital Jalandhar and kept on enquiring about the attack which was launched upon me at my own level, that I have firm belief that conspiracy of barging into my house and launching an attack was hatched by Kuldeep Kumar and Balraj Singh above named.”

CONTENTIONS

3. Learned counsel for the petitioner *inter alia* contends that not even an *iota* of evidence available on record to indicate the complicity of the petitioner in the alleged occurrence. Admittedly, the alleged occurrence had taken place on 08.03.2018. The petitioner on the day of occurrence was not even in India and he returned to India on 09.03.2018 as discernible from the perusal of copy of the passport annexed as Annexure P-4. Learned counsel further submits that once the petitioner was not in India, the offence under Section 452 of IPC cannot be invoked against him. There is no evidence with regard to the conspiracy as alleged by the complainant in the FIR to breach the threshold of Section 120B of IPC. As per the conclusion drawn in the final

report by the investigating agency, the CCTV footage did not establish the presence of Verna Car and the registration number of the same was found to be of an Acura i.e. two wheeler. Further no independent witness was ever joined during the course of investigation and the complainant alone is the only private witness in the list of witnesses attached with the final report. As such, the non-joining of independent witness would completely suffocate the case of the prosecution. Learned counsel for the petitioner further submits that the delay in lodging of the FIR of 04 days has not been explained by the complainant and the delay in lodging the FIR is used to falsely implicate the petitioner.

4. Per contra, learned State counsel opposes the prayer made by the petitioner on the ground that the name of the petitioner was duly mentioned in the FIR (supra) and he along with the co-accused Kuldeep Bansal were the conspirators behind the commission of the above said offence and the complainant was having a monetary dispute and two days prior to the above occurrence, the petitioner-Balraj Singh had threatened the complainant and he is involved in 06 more cases.

5. Having heard the learned counsel for the parties and after perusal of the record, this Court finds no merit in the present petition. The probable defence set up by the petitioner in the present petition however convincing it may appear but it cannot be appreciated by this Court at this stage. The disputed question of fact can only be decided on the basis of the evidence adduced before the learned trial Court.

6. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C is obliged to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however,

convincing it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same.

7. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in **Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another** 2022 SCC Online SC 513 and speaking through Justice Hrishikesh Roy, made the following observations: -

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum, i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

8. A two Judge Bench of the Hon'ble Supreme Court in **HMT Watches Ltd Vs. M.A. Abida (2015) 11 SCC 776** has held as under: -

“10..... Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties.”

9. In **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458**, decided by the Hon'ble Supreme Court, following observations were made: -

“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

CONCLUSION

10. In view of the above discussion, this Court cannot examine the probable defence of the petitioner set up in the present petition and scuttle the proceedings before the trial Court even before the respondent has led any evidence. The disputed question of fact and the probable defence of the petitioner can only be seen by the trial Court on the basis of evidence adduced by the parties.
11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and trial Court shall proceed without being prejudiced by observations of this Court.
12. The petitioner would be at liberty to raise all the pleas taken in the present petition at the appropriate stage during the course of trial.
13. The present petition stands dismissed accordingly.

January 20, 2024
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(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No