2024:PHHC:109355

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

262 **CRM M-35662 of 2016**
Date of Decision: 21.08.2024

Kulwinder Singh ...Petitioner

Versus

Joginder Singh ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Gagandeep Singh Sirphikhi, Advocate,
for the petitioner.

Mr. Ritesh Pandey, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the Criminal Complaint No. 6 dated 06.03.2014 under Sections 452, 323, 427, 506 and 34 IPC (Annexure P-1) and the summoning order dated 09.01.2015 (Annexure P-3) passed by the Court of Judicial Magistrate 1st Class, Batala, whereby, the petitioner has been ordered to be summoned under Sections 452, 323, 427, 506 and 34 IPC.

2. Learned counsel for the petitioner contends that the respondent/complainant had filed a complaint against the petitioners and five other persons by alleging that at about 05.30 p.m. on 17.02.2014, when the complainant was working in his house, Satnam Singh, Iqbal Singh, Kulwinder Singh, Swinder Singh, Nirmal Singh

AMIT RANA
2024.08.30 09:33
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and Sucha Singh entered their house empty handed. Kulwinder Singh, petitioner had exhorted that respondent/complainant should be taught a lesson. On his exhortation, Satnam Singh, Iqbal Singh, Swinder Singh, Nirmal Singh and Sucha Singh gave fists and slap blows on the person of respondent. It was further alleged that the respondent made a complaint to the police but no action was taken by the police and ultimately the complaint (Annexure P-1) was filed by the respondent on 06.03.2014 in the Court of Area Magistrate, Batala. Learned counsel further contends that during the course of trial, respondent examined his brother Mohinder Singh as CW1 and himself appeared as CW2 and vide order dated 09.01.2015 (Annexure P-3), the Court of Judicial Magistrate 1st Class, Batala, ordered the summoning of the petitioners and others under Sections 452, 323, 427, 506 and 34 IPC. Learned counsel further contends that it has been alleged that a *lalkara* was raised by Kulwinder Singh and Satnam Singh, Iqbal Singh, Swinder Singh, Nirmal Singh and Sucha Singh gave fists and slap blows to the respondent and they had criminally trespassed into his house. However, it is apparent that no independent witness was examined by the respondent. Further, 05 persons had allegedly caused injuries to the complainant but the respondent was never medico legally examined and no doctor has been examined by the respondent. Still further, a civil dispute regarding the boundaries of the land was pending between the petitioner and the respondent side and ultimately a Panchayat was

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2024.08.30 09:33
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convened and with the intervention of the respectables of the village, both the parties had signed a compromise dated 23.03.2014 (Annexure P-4). However, in the said compromise, the respondent had concealed the fact that he had already filed the present criminal complaint on 06.03.2014. Learned counsel further contends that the respondent had also filed a suit for declaration and permanent injunction against the petitioner and other persons, wherein, the petitioner had appeared as a defendant and had also filed his written statement (Annexure P-6). Thus, the respondent has made a futile attempt to convert a civil dispute into a criminal motion. Still further, before issuing the process, the Court of Judicial Magistrate 1st Class, Batala had not called for a report under Section 202 Cr.P.C. in order to arrive at the truth for the purpose of deciding as to whether the accused were to be summoned or not after recording the statement of the complainant and his witnesses. Still further, the trial Court completely failed to appreciate that the summoning of an accused in a criminal trial was a serious matter and the Magistrate is under a legal duty to scrutinize the evidence brought on record carefully. However, the trial Court passed the summoning order in routine and the impugned order is legally unsustainable.

3. On the other hand, learned counsel for the respondent vehemently submits that serious and specific allegations had been levelled against the present petitioner and he had initiated the fight. He exhorted all other accused to cause injuries to the respondent and

AMIT RANA
2024.08.30 09:33
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on his instigation, other accused had caused injuries to him. Thus, the petition deserves to be dismissed.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case, the respondent had filed a complaint against the petitioner by alleging that at about 05.30 p.m. on 17.02.2014, when the complainant was working in his house, six persons including the petitioner had entered the house of the respondent empty handed. On this, the petitioner raised a *lalkara* that the respondent should be taught a lesson and on his exhortation, five accused, namely, Satnam Singh, Iqbal Singh, Swinder Singh, Nirmal Singh and Sucha Singh gave fists and slap blows to the respondent. In support of the charge, the respondent examined himself as CW2 and also examined his brother Mohinder Singh as CW1. Apart from the two witnesses, the respondent did not examine any other witness to prove the occurrence in the present case. Even, the testimonies of two witnesses have to be scrutinized in the light of the fact that a civil dispute was already pending between both the parties. Even, further, five persons had allegedly caused injuries to respondent, but he did not suffer even a bruise in the instant case and no medical record has been produced by the respondent. Thus, the allegations against the petitioner seems to be improper and unbelievable.

7. Still further, there is no dispute that the inherent powers of the High Court under Section 482 Cr.P.C. should be used sparingly

AMIT RANA
2024.08.30 09:33
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and with great circumspection and at the initial stage, no inquiry is to be made in the truthfulness or falicity of the allegations. It is equally settled that this Court only has to ascertain with reference to the allegations made in the complaint as to whether on the basis of these allegations, a cognizable offence is made out or not. When the allegations made in the complaint are taken at their face value and in entirety, I find no offence is made out against the petitioner in the present case. In this part of the country, there is a general tendency on the part of the villagers to attribute the role of raising a *lalkara* on the part of one of the family members of the accused so as to involve him falsely. This fact has to be appreciated in the light of the fact that a dispute with regard to the boundaries of the fields is already pending between the parties and the matter was already *sub-judice* before the Civil Court. Consequently, it appears that the complaint (Annexure P-1) was an abuse of the process of the Court and such prosecutions can never be permitted to continue before the Courts. Still further, in the present case, from the perusal of the complaint, the only role attributed to the petitioner is that he had raised a *lalkara* and exhorted other accused to cause injuries to the respondent. Even, the occurrence had allegedly taken place on 17.02.2014 and the complaint (Annexure P-1) was filed in the instant case on 06.03.2014. Thereafter, the parties entered into a compromise on 23.03.2014 (Annexure P-4) and the compromise deed (Annexure P-4) was signed by the petitioner as well as respondent. However, there is neither any

AMIT RANA
2024.08.30 09:33
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reference of the occurrence in the said compromise deed nor the respondent had disclosed the fact that he had already filed a criminal complaint against the petitioner and others. Thus, it is apparent that the complaint was filed by the respondent only to pressurize the petitioner, with whom, he was having a civil litigation before the Civil Court.

8. In view of the above discussion, it is apparent that the criminal prosecution in the instant case is attened with *malafide* and is an abuse of the process of the Court. This Court finds it to be a fit case for exercising the inherent powers to prevent the abuse of the process of the Court and to secure the ends of justice.

9. Accordingly, complaint dated 06.03.2014 (Annexure P-1) and the summoning order dated 09.01.2015 (Annexure P-3) are hereby ordered to be quashed qua the petitioner only alongwith all subsequent proceedings arising therefrom.

21.08.2024. **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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

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2024.08.30 09:33
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