

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27866-2021 (O&M)
DATE OF DECISION : 18.03.2024

NARENDER ALIAS NINDER AND OTHERS ... PETITIONERS

V/S

STATE OF HARYANA AND OTHERS ... RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Kartar Singh, Advocate for the petitioners.
Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.
Mr. G.S.Randhawa, Advocate for
Mr. H.S.Sahu, Advocate for respondent Nos.2 to 5.
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HARPREET KAUR JEEWAN, J. (ORAL)

1. The petitioners are seeking to quash the FIR No. 989 dated 10.11.2018 under Sections 148, 149, 294, 323, 307 IPC, Section 25/54/59 of Arms Act (Sections 326, 354, 506 IPC have been added later on) registered at Police Station City Ballabgarh, District Faridabad by respondent No.2 against the petitioners on the basis of compromise between the parties dated 15.01.2020 (Annexure P-2).
2. Briefly, the dispute arose when on 09.11.2018 at about 8:30 p.m., the daughter of the complainant (Ramesh Chander) namely Pxxx was eve-teased by Sunil (accused). The complainant was then threatened that his daughter would be kidnapped and he called 15-16 people. The petitioners inflicted injuries upon the complainant and Sunil-petitioner No.2 fired 10-12 shots with his revolver with the intention to kill the complainant.

3. Learned counsel for the petitioners contends that the parties

have amicably settled the dispute and respondent No.2, at whose instance the FIR was lodged does not want to take any action in the present FIR. Learned counsel for the petitioners has further placed reliance upon the decisions of this Court in ***Gurjinder Singh and others Vs. State of Punjab and others; 2022(3) RCR (Criminal) 702 and Janak Raj and others Vs. State of Punjab and another; 2019(2) Law Herald 1678.*** He has also placed reliance upon the decision of the Hon'ble Apex Court in ***Kailash Chand Vs. State of Rajasthan; 2018(4) RCR (Criminal) 292***, whereby the FIR was quashed in view of a compromise between the parties.

4. Learned State counsel has filed the status report by way of affidavit of Munish Sehgal, Assistant Commissioner of Police, Ballabgarh, Faridabad, which is taken on record

5. Learned counsel appearing on behalf of respondent Nos. 2 to 5 has confirmed the factum of compromise between the parties.

6. I have considered the aforesaid contentions.

7. As per the order dated 23.07.2021, the statements of the parties were ordered to be recorded by the learned trial Court. Thereafter, as per order dated 27.01.2023, an objection was raised by the learned State counsel that there are 5 injured including one constable and all the injured have not been made party in the petition. Subsequent to that, an application was moved for impleading the injured persons as respondent Nos. 2 to 5 which was allowed as per the order dated 18.04.2023.

8. As per the report of the Civil Judge (Jr. Divn.) Faridabad dated 09.08.2021, there are various other FIRs pending against the petitioners, the detail of which is as under:-

present FIR- FIR No. 988 of 2018, P.S. Ballabgarh (City), the following accused persons of the present case have other FIRs also registered against them, as has been given below.

Accused Kuldeep & Sunil - FIR No. 314 dated 18.6.2010, u/s 323, 307, 452, 34 of IPC & 25-54-59 of Arms Act, P.S. Ballabgarh (City).

Accused Sunder, Sunil & Kuldeep - FIR No. 839 dated 19.10.2013, u/s 323, 506, 34 of IPC, P.S. Ballabgarh (City).

Accused Sunder & Kuldeep - FIR No. 137 dated 6.5.2015, u/s 323, 341 & 506 of IPC, P.S. Ballabgarh (Sadar).

Accused Manish, Narender & Sunil Kumar- FIR No. 82 dated 8.2.2017, u/s 354-A, 506, 34 of IPC, P.S. Sector-7, Faridabad.

Accused Manish - FIR No. 325 dated 19.6.2017, u/s 148, 149, 285, 323 & 506 of IPC & 25-54-59 of Arms Act, P.S. Kherki Dola, Gurgaon.

Accused Kuldeep - FIR No. 1024 dated 26.11.2018, U/S 195-A, 506, 34 of IPC, P.S. City Ballabgarh.

Accused Narender & Manish @ Rinku - FIR No. 256 dated 31.5.2020 u/s 323, 506, 34 of IPC, PS. Central, Faridabad.”

9. Learned State counsel has informed that out of 45, 41 witnesses have been examined and only 4 witnesses have been left.

10. The trial is almost complete. As per the status report filed by way of affidavit of Munish Sehgal, Assistant Commissioner of Police, Ballabgarh, during the course of investigation on 12.11.2018, one country made pistol 32 bore was got recovered from accused-petitioner Sunil Kumar which was used by him at the time of commission of offence with an intention to kill the complainant. Ten empty cartridges were also recovered from the spot. One pistol 32 bore was recovered from accused-petitioner Narender @ Ninder which was found to be licenced. A pistol 32 bore and a license thereof was recovered from the accused-petitioner Manish. One bullet (Sikka) shot was removed from the leg of Sunil was also taken into possession from the hospital. It has been alleged that during further investigation, an injury to the complainant-Ramesh Chand was also inflicted. It has been opined as per the report dated 31.12.2018 the nature of injuries were grievous. As per the MLR, discharge summary and medical opinion (Annexures R-1 to R-3) one of the injury was on the skull which was operated and procedure was conducted

under anesthesia. As per the discharge summary even a fracture of the right parietal bone was noted, associated with significant scalp edema. The injured has been discharged with follow-up in neurology, orthopaedic and cardiology OPD.

11. In view of the decision of the Hon'ble Apex Court in **State of Madhya Pradesh Vs. Kalyan Singh (SC); 2019(1) RCR (Criminal) 705;** despite any settlement between the complainant and the accused where allegations are serious in nature, criminal proceedings for offences under Section 307 IPC cannot be quashed as the same is non-compoundable offence. The observations by the Hon'ble Apex Court are as under:-

“It is required to be noted that the original Accused was facing the criminal proceedings under Sections 307, 294 read with section 34 of the IPC. It is not in dispute that as per section 20 of the Cr.PC offences under Sections 307, 294 read with section 34 of the IPC are non-compoundable. It is also required to be noted that the allegations in the complaint for the offences under Sections 307, 294 read with section 34 of the IPC are, as such, very serious. It is alleged that the accused fired twice on the complainant by a country-made pistol. From the material on record, it appears that one of the accused persons was reported to be a hardcore criminal having criminal antecedents. Be that as it may, the fact remains that the accused was facing the criminal proceedings for the offences under Sections 307, 294 read with section 34 of the IPC and that the offences under these sections are not non-compoundable offences and, looking to the serious allegations against the accused, we are of the opinion that the High Court has committed a grave error in quashing the criminal proceedings for the offences under Sections 307, 294 read with section 34 of the IPC solely on the ground that the original Complainant and the accused have settled the dispute. At this stage, the decision of this Court in the case of **Gulab Das and Ors. v. State of M.P. 2012(1) RCR (Criminal) 220: (2011) 12 SCALE 625** is required to be referred to. In the said decision, this Court has specifically observed and held that, despite any settlement between the Complainant on the one hand and the accused on the other, the criminal proceedings for the offences under section 307 of the IPC cannot be quashed, as the offence under Section 307 is a non-compoundable offence. Under the circumstance, the impugned judgment and order passed by the High Court quashing the criminal proceedings against the original Accused for the offences under Sections 307, 294 read with section 34 of the IPC cannot be sustained and the same deserves to be quashed and set aside.”

12. No doubt the parties have effected a compromise but keeping in view the nature of injury, period and the procedure undergone by the

injured in the medical treatment, and the fact that the country-made pistol which was not even licenced was recovered from one of the accused Sunil and the weapons were recovered from two of the petitioners namely Manish and Narender and also in view of the ratio of decision by the Hon'ble Apex Court in **Kalyan Singh's** matter (supra), it is not a fit case for quashing the FIR on the basis of compromise. There is history of other cases against the petitioners.

13. Learned counsel for the petitioners has also relied upon the decision of the Apex Court in ***Kailash Chand Vs. State of Rajasthan; 2018(4) RCR (Criminal) 292***. The relief was granted in the said case since the occurrence took place 30 years ago and the appellant as well as complainant were from the same family whereas the facts in the present case are distinguishable. There is history of other criminal cases against the petitioners and one of the police personnel is also injured regarding which a separate FIR No. 988 dated 10.11.2018 has been registered. As such, the ratio in the said case is not applicable to the present matter.

14. The decision in ***Gurjinder Singh and others Vs. State of Punjab and others; 2022(3) RCR (Criminal) 702 and Janak Raj and others Vs. State of Punjab and another; 2019(2) Law Herald 1678*** relied upon by the learned counsel for the petitioner is also distinguishable on facts. As such, the ratio of the said decisions is not applicable to the facts of the present case.

15. In view of the above discussion, the present petition stands dismissed.

18.03.2024

Janki

(HARPREET KAUR JEEWAN)
JUDGE