

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32859-2024 (O&M)

Decided on 12.07.2024

Randhir Singh Redhu & Ors.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. AmandeepVashisth, Advocate for the petitioners

Sandeep Moudgil, J.

(1). This is a petition under Section 482 CrPC filed by the petitioners seeking to quash the FIR No.0005 dated 03.01.2022 under Sections 147/149/323/452/506 IPC registered at Police Station Sector 10, Gurugram as well as the report under Section 173(2) CrPC dated 10.06.2022 (Annexure P10) qua petitioners No.3& 4 and report under Section 173(8) dated 04.10.2022 (Annexure P11) against petitioners No.1 & 2 along with consequential proceedings arising therefrom.

(2). Learned counsel for the petitioners submits that the instant FIR was lodged by the respondent No.2 alleging that the petitioners had given beatings and manhandled the staff of her School at Gurugram. It is urged that the petitioners were not present at the site during the alleged incident relying upon video clips (Annexure P-12) and challans (Annexures P-10 & P-11) which shows that no such incident occurred as claimed by respondent No.2. He submits that no medical report or any documentary evidence is available or placed on record in order to corroborate her vague and baseless allegations.

(3). It is argued that the petitioners are office bearers of the Resident Welfare Association and residents of NBCC Heights, Sector-89, Gurugram and since they are pursuing civil litigation against respondent No. 2 regarding encroachment and illegal occupation of a open area near the nursery school of respondent No.2 regarding which there is no incorporation in the sale deed executed by her, the instant FIR against the petitioners has been registered with malicious intent by respondent No.2 to hinder the pending civil litigation inter se parties.

(4). It is settled law that when an accused raises plea of *alibi*, the burden is on the accused (petitioners herein) to prove the same. A plea of alibi is a question of fact which is required to be proved by the accused at the stage of trial. Under Section 103 of the Evidence Act, the burden rests on the accused who raises the plea of alibi. Section 103 of the Evidence Act provides :-

"103. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

(5). This provision makes it obvious that the burden of establishing the plea of alibi set up by the accused lay squarely upon him, which could be done by leading evidence in the trial and not by filing some affidavits or video clips etc. before this Court and cannot sit over the trial proceedings. In such a case the prosecution would have got an opportunity to cross-examine those witnesses and demonstrate that their testimony was not correct. That apart, no finding on a plea of alibi can be recorded by the High Court for the first time in a petition under Section 482 CrPC.

(6). 15. The proceedings under section 482 of the criminal procedure code are summary proceedings and this Court in exercise of jurisdiction under section 482 do not exercise the power of appreciating the case of the parties after leading of evidence. The power exercised by this Court is discretionary in nature. The defence of the accused although may appear to be a possible should not be taken into consideration for exercise of the jurisdiction under section 482 Cr.P.C. by this Court *albeit* this Court in exercise of its inherent powers cannot go into the disputed question of facts. Under normal circumstances, the defence of the accused is required to go through the trial proceedings and thereafter a finding is required to be recorded by the trial court with regard to the veracity of the defence raised by the accused person.

(7). The Supreme Court in **Kamal Prasad & Ors. versus State of Madhya Pradesh (now State of Chhattisgarh) 2023 LiveLaw (SC) 891** while relying upon its earlier judgment rendered in **Binay Kumar Singh v. State of Bihar, (1997) 1 SCC 283** culled the principles regarding the plea of alibi. The same read as under:-

“23. The Latin word alibi means “elsewhere” and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime.” 19. The principles regarding the plea of alibi, as can be appreciated from the various decisions⁷ of this Court, are:

19.1 It is not part of the General Exceptions under the IPC and is instead a rule of evidence under Section 11 of the Indian Evidence Act, 1872.

19.2 This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.

19.3 Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.

19.4 The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.

19.5 It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of ‘strict scrutiny’ is required when such a plea is taken.

(8). In view of the above discussion, this Court does not find any merit in the contention raised by the petitioners sufficient enough for this Court to interfere and quash the proceedings which are not ripe.

(9). Dismissed.

(10). It goes without saying that the petitioners would be at liberty to approach the court concerned by moving an appropriate application for substantiating the plea of alibi.

(11). Further, the observations made by this Court in the present application shall not in any manner affect the case of the petitioners before the trial court.

12.07.2024
V Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No