

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

CRM-M-62579-2024
DATE OF DECISION:16.12.2024

JANG SINGH ALIAS TSIERIS PANAGIOTIS

....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S. Swaich, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J

1. The instant petition has been preferred under section 528 BNSS, 2023 seeking quashing of FIR No. 121 dated 08.12.2022 (Annexure P-1) under Section 323, 452, 506, 34 IPC, 1860 (Section 324 added later on and Section 34 deleted) and all subsequent proceedings arising therefrom including the challan dated 16.07.2023 (Annexure P-2), order dated 22.11.2024 (Annexure P-2/A collectively) whereby, charges have been framed.
2. The factual matrix pertaining to the present case is that Jung Singh alias Tsieris Panagiotis and Gurmail Singh Meli entered into the house of the complainant and thereafter gurmail Singh Meli caught the complainant while Jung Singh gave fist blows on eye, nose, head and chest of the complainant the motive as stated in the FIR is that the present petitioner and the

complainant are both brothers who are entangled in a property dispute in lieu of the the Olympic Place at Marauli Kalan for which Jung Singh had issued a cheque of Rs 25 Lakhs in favour of the complainant which subsequently got dishonoured and complaint dated 8.05.2018 (Annexure P-10) was registered and in that instance both Jung Singh and Gurmail Singh gave beatings to the complainant.

3. The counsel for the petitioner contends that the present petitioner has been falsely implicated in the present case and even the accused Gurmail Singh has been found to be innocent during the investigation and the charges framed on 22.11.2024 are only qua the present petitioner.

4. The counsel further argues that the alleged spot of occurrence i.e. the house constructed on the plot is in joint ownership of the complainant-respondent No 2 namely Harwinder Singh Heera who is the real brother of the petitioner vide sale deed dated 11.11.2009 (Anexure P-3) Also, the respondent No 2 namely Harwinder Singh Heera transferred his half share to the respondent No 3 namely Kirandeep Kaur Heera who is his wife, both Respondent No 2 and 3 are not having exclusive possession of the property but are in joint possession and joint ownership with the petitioner. Therefore the offence of house trespass punishable under section 452 IPC is not made out.

5. On the other hand, learned State counsel appearing on advance notice submits that on perusal of Medico legal report and the pen drive version as mentioned in the challan presented, it is clearly evident that actually the incident took place, meaning thereby, offence under Section 452 IPC is made out.

6. Having heard the arguments of both the parties this court is of the considered view that the the contentions raised by the learned counsel for the

petitioner do not carry any weight as in the present case the challan presented specifically mentioned a pen drive wherein the recording of the entire incident has been taken into consideration before filing the same and therefore is a matter of evidence which is to be led in the trial court and this court refrains from interference with the same.

7. This Court is also conscious of the fact that the Police has the statutory right and duty under the relevant provisions of the [Code of Criminal Procedure](#) contained in Chapter XIV of the Code to investigate into a cognizable offence;

“i) Courts would not thwart any investigation into the cognizable offences;

ii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iii) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the `rarest of rare cases (not to be confused with the formation in the context of death penalty).

iv) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

v) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

vi) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

vii) The functions of the judiciary and the police are complementary, not overlapping;

viii) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

ix) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

x) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported.”

8. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

“i) The power under [Section 482 Cr.P.C., 1973](#) is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

*ii) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self restraint imposed by law, more particularly the parameters [laid down by](#) this Court in the cases of *R.P. Kapur (supra)* and *Bhajan Lal (supra)*, has the jurisdiction to quash the FIR/complaint;*

iii) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under [Section 482 Cr.P.C., 1973](#) only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

iv) *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under [Section 482 Cr.P.C., 1973](#) and/or under [Article 226 of the Constitution of India.](#)*

9. This Court is conscious of the similar view as taken in the case of **“Tayab Hussain v. Kanchan Sharma” RCR (Criminal) (2) 707** by the co-ordinate bench of this court wherein, following observation was made:-

“15. Learned counsel for the first-respondent also relied upon a decision of the Hon'ble Supreme Court in State of Tamil Nadu vs Thirukhural Perumal, 1995(2) RCR 124. That was a case where the F.I.R. was quashed by the High Court at the instance of the accused. The Hon'ble Supreme Court found that while quashing the proceedings, reliance had been placed upon some evidence collected by the investigating agency during the investigation and held as follows :-

"The approach of the learned Judge in relying upon such evidence, which is yet to be produced before the trial Court, to quash the criminal proceeding in crime case No. 246/92 (supra) was not proper. The power of quashing a FIR and criminal proceedings should be exercised sparingly by the Courts. Indeed, the High Court has the extraordinary or inherent power to reach out injustice and quash the First Information Report and criminal proceedings, keeping in view the guidelines laid down by this Court in various judgments (reference in this connection may be made with advantage of State of Haryana and others v. Bhajan Lal and others 1992 Supp (1) 335 but the same has to be done with circumspection. The normal process of the criminal trial cannot be cut short in a rather casual manner. The Court is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR or the complaint on the basis of the evidence collected during investigation only while dealing with a petition under Section 482 Criminal Procedure Code, 1973 seeking the quashing of the FIR and the criminal proceedings."

10. In view of the discussion made herein above and the dictums laid down by the Apex Court, this court finds no cogent reason to interfere with the proceedings on going in this matter, as disputed questions of facts are involved that can only be adjudicated once the parties are able to lead the evidence before the trial Court.

11. Accordingly, the present petition stands dismissed.

16.12.2024
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(SANDEEP MOUDGIL)
JUDGE

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