
(1996) 02 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 1736-M of 1994

Vijay Kumar and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Feb. 27, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 227, 228, 229, 482
- Penal Code, 1860 (IPC) - Section 147, 149, 380, 394, 427

Citation: (1996) 1 ALT(Cri) 9 : (1996) CriLJ 3070 : (1996) 2 RCR(Criminal) 21

Hon'ble Judges: P.K. Jain, J

Bench: Single Bench

Advocate: S.S. Narula, for the Appellant; S.S. Randhawa, DAG, V.K. Jain and J.L. Malhotra, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.K. Jain, J.

This petition has been filed u/s 482 of the Code of Criminal Procedure (hereinafter referred to as (the Code")) for quashing the FIR No. 56 dt. 2-5-1993, registered at Police Station Kotwali Bathinda, for the offences under Sections 147/427/448/149/380/506 of the Indian Penal Code (Annexure P-2) along with all subsequent proceedings arising therefrom including the charge shed (Annexure P-3) the order framing charge dated 3-12-93 (Annexure P-4) and the charge-sheet (Annexure P-5).

2. The facts necessary for the disposal of this petition can be gathered from the order dated 3-12-1993 (Annexure P-4), passed by the Additional Sessions Judge, Bathinda. M/s. Khimji Visram and Sons is in occupation of first and second storeys of building No. 4552, situated in Dhobi Bazar. Bathinda. as a tenant for the last 35-40 years on a monthly rent of Rs. 500/-. The landlord filed an ejectment application

which was dismissed by the Rent Controller. The landlord succeeded in appeal and an order of ejectment was passed. In Civil Revision No. 1891 of 1992 filed by the tenant-Firm, {execution of ejectment order was stayed subject to the deposit of entire arrears of rent then due within one month from the date of order dated 24-7-1992, with the further order that the tenant would continue paying monthly rent by the 10th of every month, and in case of default the interim stay granted would be deemed to have been vacated. According to the tenant-Firm, it deposited the arrears of rent and also continued paying the monthly rent as directed.

3. On 8-4-1993 the landlord filed an execution application alleging therein that the tenant had failed to pay or deposit the rent as per directions of the High Court and as such the interim stay stood automatically vacated. After obtaining office report, the Executing Court issued warrants of possession on 8-4-1993 itself. When the Bailiff went to the spot for the execution of the warrants, stay order was shown to him and the Bailiff made a report on the warrants and left the place.

4. According to the tenant, after few minutes of the Bailiff's leaving the premises, Vijay Kumar son of Mithan Lal, Desa son of Ramji Das and Vijay Kumar son of Om Parkash accompanied with 10-12 unknown persons armed with dandas. knives, revolver etc. forcibly trespassed into the demised premises being agitated due to their inability to get possession, that they started beating and abusing the employees of the Firm and also threatened them to be killed. These persons threw away furniture and the costly items lying in the premises through the window outside in the Bazar. The goods thus damaged were of more than Rs. 10 lakh. These persons also took away the belongings of the employees of the Firm and a cash amount of Rs. 30,000/- On an alarm being raised, the said culprits ran away from the site after taking away the money and causing the said havoc. Immediately thereafter a written complaint dated 11-4-1993 was submitted to the police along with a list of articles which were damaged. Daily diary Report No. 11 dated 11-4-1993 was recorded but no case was registered till 15-4-1993 when again a written complaint was filed with the Senior Superintendent of Police. This complaint was entrusted to Shri Piara Singh, Superintendent, Headquarters, for enquiry. After obtaining his report and the opinion of the Deputy District Attorney, the F.I.R. in question was registered on 2-5-1993. During investigation, it was found that the petitioners along with other persons, who could not be identified, had committed the offences under Sections 147, 427, 448, 450, 380, 394, 506 read with S. 149 of the Indian Penal Code. A charge sheet was filed in the Court of the Chief Judicial Magistrate. Since an offence u/s 450, I.P.C., is exclusively triable by the Court of Session the case was committed to the Court of Session.

5. After hearing the prosecution as well as the defence and on perusal of the record of the case. Additional Sessions Judge, Bathinda, by order dated 3-12-1993 has come to a finding that prima facie the petitioners have committed offences under Sections 147, 427, 380, 394, 506, 450 read with Section 149 of the Indian Penal Code and as

such charge has been framed against the petitioners accordingly. Feeling aggrieved, the petitioners have filed the present petition.

6. Shri S.S. Narula, Advocate, learned counsel for the petitioners, has argued that even if all the allegations contained in the FIR are taken to be correct, no offence u/s 394/450, IPC, is made out and the Additional Sessions Judge was in error in framing a charge for the said offence against the said petitioners. It has also been argued that the so-called FIR is a counter-blast to the civil litigation pending between the parties and no such occurrence ever took place and the petitioners have been maliciously implicated. It has also been pointed out that no medical examination regarding causing of hurt to the employees of the complainant-Firm was ever undertaken and allegations of taking away the money are false and fabricated.

7. On the other hand Shri S.S. Randhawa, learned Deputy Advocate General, Punjab, assisted by Shri V.K. Jain, counsel for the complainant, has argued that at the stage of framing the charge the trial Court is required to see from the material made available by the investigating agency that there is a strong suspicion that the accused has committed a particular offence, the Court is bound to frame a charge against the accused as envisaged by Section 229 of the Code. It has been further argued that at this stage it is not open to the Court to see the correctness or otherwise of the allegations contained in the first information report.

8. There is a chain of decisions of the apex Court to the effect that the provisions of Sections 227 and 228 of the Code are to be read together in juxtaposition. The standard of test, proof and Judgment which is needed for finding of a guilt or otherwise is not necessary for framing of charge at this stage and even a strong suspicion founded upon materials before the Court may justify framing of charge. The Court can sift and weigh evidence for the purpose of finding out whether prima facie case against the accused has been made out. If two views are equally possible and the evidence gives rise to a grave suspicion, charge may be framed. The word "ground" has been used in these two sections in the context of putting an accused on trial. It is in the trial, that the guilt or the innocence of the accused will be determined and not at the time of framing charge. The Court, therefore, need not undertake an elaborate inquiry in sifting and weighing the materials. Nor is it necessary to delve deep into various aspects. Reference in this connection may be made to the decisions rendered in [State of Bihar Vs. Ramesh Singh](#), [Union of India \(UOI\) Vs. Prafulla Kumar Samal and Another](#), [Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others](#), and [Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others](#), .

9. Turning to the present case, it is expressly mentioned in the FIR that after the Bailiff had left the place making his endorsement regarding the stay granted by the High Court on the warrant of possession, the petitioners along with 10-12 other persons duly armed with different weapons forcibly entered the premises in question, abused and gave beating to the employees of the Firm and threatened

them to be killed. It is further alleged that the petitioners and their accomplices threw out the furniture and costly goods through the window in the Bazar and thus they caused a loss of worth Rs. 10 lakhs. It is further alleged that these persons took away the belongings of the employees and a cash amounting to Rs. 30,000/- of the Firm. On the basis of these allegations, which prima facie find affirmation in the evidence collected during the investigation reveal the commission of various offences as mentioned by the Additional Sessions Judge in his order dated 3-12-1993. When the Additional Sessions Judge, with his judicial knowledge and experience in criminal trials, has framed a charge after perusing the record and hearing the parties in support there of, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the Court in the face. I do not find any irregularity or illegality of any kind with the impugned order dated 3-12-1993 (Annexure P-4) whereby the petitioners have been ordered to be charged for the offences under Sections 147, 427, 380, 394, 506, 450 read with Section 149 of the Indian Penal Code. The question as to whether the allegations contained in the first information report or in the statements of the witnesses examined u/s 161 of the Code are correct or not, is the subject-matter of the trial and no opinion can be expressed at this stage only on affidavits filed by the parties.

10. As a result of the above discussion, I do not find any merit in this petition and the same is hereby dismissed. The petitioners through their counsel are directed to appear before the trial Court on 20-3-1996.