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Jitender and Others Vs State of Haryana and Another

C.R.M. No. M-29561 of 2010 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 8, 2010

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 482#Penal Code, 1860 (IPC) â€" Section 302, 304B, 307, 323, 34

Citation: (2013) 3 RCR(Criminal) 114

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: Sarvjit Singh Khurana, for the Appellant;

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.
The crux of the facts, culminating in the commencement, relevant for deciding the core controversy raised in the

instant petition and emanating from the record, is that complainant Pardeep Kumar was residing in Dubai. He came to India on 21.10.2009 to

enjoy his vacations for one month. As ill luck would have been, on 6.11.2009 at about 7/8 P.M., as soon as he was watching TV alongwith his

parents, in the meantime, accused Jitender son of Ram Avtar entered in their drawing room. He also called his brother and co-accused Mahesh

Kumar and one another accused Shree Bhagwan alias Dara, inside the drawing room, who were standing outside the gate. Some altercation took

place between Sunita, wife of the complainant and Mahesh Kumar, brother of accused Jitender. Mahesh Kumar was stated to be suddenly got

angry and slapped Sunita PW. The prosecution claimed that as soon as the complainant stood up to rescue his wife Sunita, in the meantime,

accused Shree Bhagwan alias Dara put red chilly powder in his (complainant) eyes. Thereafter, accused Mahesh Kumar inflicted scissors blows,

which hit on left side of his chest and inflicted second injury on left side of stomach (vital parts) of the complainant. Third injury inflicted by him was

on his finger. Then accused Jitender also gave slaps and fist blows to the complainant. When father and wife of the complainant came to rescue

him, thereafter, all the accused decamped from the place of occurrence, after giving threat to them with dire consequences of elimination.

2. Levelling a variety of allegations and narrating the sequence of events, in all, according to the complainant that first of all, accused Mahesh

Kumar slapped the wife of the complainant. Thereafter, accused Shree Bhagwan put red chilly powder in the eyes of the complainant, while

accused Mahesh Kumar repeatedly inflicted injuries with the scissors on vital parts of the complainant and accused Jitender also gave slaps and fist

blows to him (complainant) after entering into his house. Immediately thereafter, his father arranged a vehicle and took the complainant in an injured

condition to Government Hospital, Rewari for treatment, where the doctor, after examining and keeping his serious condition in focus, advised to

take him to some hospital at Delhi. Thereafter, he was admitted and treated in Paras Hospital at Gurgaon. On the basis of aforesaid allegations and

in the wake of complaint of the complainant, the present case was registered against the accused, vide FIR No. 180 dated 7.11.2009 (Annexure

P1) on accusation of having committed the offences punishable under sections 307, 323 and 452 read with section 34 IPC by the police of Police

Station Rampura, District Rewari.

3. At the very outset, instead of submitting to the jurisdiction of the Court, the petitioners straightway filed earlier petition bearing CRM No. M-

22355 of 2010 for quashing the FIR on the basis of compromise, but after arguing for some time, their learned counsel intended to withdraw the

petition, which was dismissed as withdrawn by this Court, by virtue of order dated 22.9.2010. After dismissal of first petition, now the petitioners

have again filed the present second petition for quashing the same FIR (Annexure P1) on the basis of same compromise.

4. Having heard the learned counsel for the petitioners, having gone through the record with his valuable help and after bestowal of thoughts over

the entire matter, to my mind, there is no merit in the instant petition.

5. Ex facie, the argument of the learned counsel that although the offences under sections 307 and 452 IPC are not compoundable, but still the FIR

deserves to be quashed, in view of the law laid down by the Full Bench of this Court in case Kulwinder Singh and Others Vs. State of Punjab and

Another, , is not only devoid of merit but misplaced as well, wherein it was concluded as under (para 30):-

The power u/s 482 of the Cr.P.C. is to be exercised Ex- Debitia Justitia to prevent an abuse of process of Court. There can neither be an

exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts

and circumstances of each case. The power u/s 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with

utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective

instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting

congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and

prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of

the society or would promote savagery.

6. Possibly, no one can dispute with regard to the aforesaid observations, but to me, the same would not come to the rescue of the petitioners-

accused at this stage.

7. As is evident from the record that there are direct and very serious allegations that all the accused committed house tress-pass, having made

preparation for causing hurt to the complainant and his family members. First of all, accused Mahesh Kumar slapped Sunita PW wife of the

complainant. Accused Shree Bhagwan put the red chilly powder in the eyes of the complainant. Thereafter, accused Mahesh Kumar repeatedly

caused injuries on vital parts i.e. chest, stomach and finger of the complainant with scissors. Accused Jitender gave him slaps and fist blows as well.

In this manner, all the accused have been charged for the commission of offences punishable under sections 307, 323 and 452 read with section

34 IPC in this regard.

8. Section 307 IPC postulates that ""whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act

caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years,

and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or such

punishment as is hereinbefore mentioned.

9. The sequence of events, as narrated here-in-above, would leave no manner of doubt that all the essential ingredients of sections 452, 307 and

323 read with section 34 IPC are fully attracted to the facts of the present case. Therefore, the contrary arguments of learned counsel for the

petitioners that no offences under sections 307, 452 and 323 IPC are made out ""stricto sensu"" deserve to be and are hereby repelled under the

present set of circumstances. In that eventuality, the mere fact that the accused have entered into the alleged compromise (Annexure P2) with the

complainant (which is even not signed by other eye witness of the occurrence), is not a ground for quashing the FIR in such a heinous offences of

house tress-pass and attempt to murder in this relevant connection.

10. An identical question arose before the Hon''ble Apex Court in case Manoj Sharma Vs. State and Others, Having interpreted the relevant

provisions, it was observed as under (paras 33 and 34):-

There can be no doubt that a case u/s 302 IPC or other serious offences like those under Sections 395, 307 or 304B cannot be compounded and

hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power u/s 482 Cr.P.C. or in writ jurisdiction on the

basis of compromise. However, in some other cases, (like those akin to a civil nature) the proceedings can be quashed by the High Court if the

parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn will have to be

decided in some later decisions of this Court, preferably by a larger bench (so as to make it more authoritative). Some guidelines will have to be

evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, otherwise there may be conflicting decisions and

judicial anarchy. A judicial discretion has to be exercised on some objective guiding principles and criteria, and not on the whims and fancies of

individual Judges. Discretion, after all, cannot be the Chancellor''s foot.

I am expressing this opinion because Shri B.B. Singh, learned counsel for the respondent has rightly expressed his concern that the decision in B.S.

Joshi''s case (supra) should not be understood to have meant that Judges can quash any kind of criminal case merely because there has been a

compromise between the parties. After all, a crime is an offence against society, and not merely against a private individual.

11. Meaning thereby, the above indicated observations ""mutatis mutandis"" are applicable to the present controversy and are the complete answer

to the problem in hand.

12. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the petitioners.

13. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the

course of the trial of the case, to me, it would not be in the interest of administration of criminal justice, to quash the FIR (Annexure P1) in such

heinous offences of house tress-pass coupled with attempt to murder at this preliminary stage of investigation. Therefore, since there is no merit, so,

the instant petition is hereby dismissed, in the obtaining circumstances of the case. Needless to state that nothing observed, here-in-above, would

reflect, in any manner, on merits of the main case, as the same has been so recorded for a limited purpose of deciding the present petition in this

relevant context.