

Nidhi Kakkar Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 18, 2014

Acts Referred: Constitution of India, 1950 " Article 226
Criminal Procedure Code, 1973 (CrPC) " Section 155(2), 156(1), 173, 482
Penal Code, 1860 (IPC) " Section 323, 34, 406, 452, 498-A

Hon'ble Judges: Surinder Gupta, J

Bench: Single Bench

Advocate: Ranjan Lakhanpal, Advocate for the Appellant; Deepak Garg, AAG, Punjab, Kanwaljit Singh, Sr. Advocate and Neeraj Chaudhary, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Surinder Gupta, J.

Petitioners seek quashing of the FIR No. 59 dated 16.4.2010 registered at Police Station Division No. 7, Jalandhar for offence punishable under Sections 452/323 read with Section 34 IPC, at the instance of respondent No. 2.

2. The FIR got registered by Gulshan Raj Kakkar (respondent No. 2), Annexure P/1, is as follows :-

On dated 5.3.2010 around 20"Clock, I was inside my house. Nidhi who is divorced wife of my son Munish Kakkar and with her a person named

Surkesh Kumar entered forcibly inside our home and manhandled me and further said that we have come to teach you a lesson because your son

has filed divorce case against us. Nidhi picked up the stick lying in my house and started hitting me. Both of them abused and slapped me. They

came to our home on a motor cycle. Due to their beatings I have taken MLR from Civil Hospital and the doctor gave in the MLR particulars of

injuries showing how much they have given beatings to me. Being 68 years of age I could not tolerate these injuries. Many neighbours gathered

who saw everything. When both of them tried to ran away from the house, then we rang twice on No. 100, my wife rang from landline. She dialed

the number of Division No. 7. After sometimes two police men came on motor cycle and they caught both of them outside the house and on my

asking they brought both of them to Police Station Division No. 7 and after that I received phone call from Division No. 7 to come to police station

and explain the whole matter so that the further proceedings can be done. I along with my family and witnesses came to police station and met

SHO and explained the whole story to him. SHO asked to give complaint in writing so that action could be taken against them. I gave complaint

and copy of MLR on that day.

3. On investigation, the police found that the injuries were caused to the complainant-respondent No. 2 by the petitioners inside his house and the

FIR was registered for offence punishable under Sections 323/452 read with Section 34 IPC, wherein challan has been presented.

4. Learned counsel for the petitioners has argued that FIR in question is the result of matrimonial feud between the petitioner No. 1 Nidhi Kakkar

and her husband Manish Kakkar son of respondent No. 2. Due to strained relations, the petitioner No. 1 had got an FIR under Sections 406/498-

A IPC, bearing No. 215 dated 17.8.2005 registered against her husband, her mother-in-law, father-in-law (respondent No. 2 herein) and other

relatives of respondent No. 2 which is pending trial. Manish Kakkar husband of petitioner No. 1 filed a divorce petition, in which divorce was

allowed but in appeal, petition filed by son of respondent No. 2 has been dismissed. The wife of respondent No. 2 filed a criminal complaint

against petitioner No. 1 levelling wild and false allegations. The petitioner No. 1 has sought quashing of the said complaint by filing CRM-M-

25627 of 2009 which is pending in this Court. A complaint was also filed by the maternal uncle of husband of petitioner NO. 1 u/s 500 IPC and

the complainant-respondent No. 2 has filed CRM-M-10439 of 2010 seeking quashing of the same which is also pending in this Court. The

matrimonial feud has also resulted in other litigation between the parties and the instant FIR is also an out come of the same. The petitioner No. 1

has moved an application to the police on 10.5.2010 giving detailed facts about the occurrence along with her MLR but the police after ignoring

the real facts has not taken any action against respondent No. 2. The police has registered FIR after a lapse of one month and eleven days. The

statement to the police was made by the respondent No. 2 after consulting his advocate/legal adviser. The petitioner No. 2 has been implicated in

this case as he treats the petitioner No. 1 as his "Dharam sister".

5. Learned State counsel has argued that the occurrence had taken place on 5.3.2010 at about 2.00 p.m. when the petitioners entered the house

of respondent No. 2. The petitioner No. 1 picked up a danda lying in the courtyard and caused blow to respondent No. 2 as a result of which he

suffered injuries. On hearing raula the neighbours got attracted to the place of occurrence at which the petitioners tried to escape but the matter

was reported to the police and the police apprehended both the petitioners. The complaint given by respondent No. 2 was supported by medical

evidence. He had six injuries on his person which were caused with blunt weapon. Initially the police had recorded DDR No. 27 dated 19.3.2010

and on investigation, version of respondent No. 2 was found correct and FIR was registered on 16.4.2010. The petitioner No. 1 moved

representation, on which enquiry was conducted by the Additional Deputy Commissioner of Police (Crime) Jalandhar, who recommended change

of offence from Section 452 to 451 IPC and thereafter final report u/s 173 Cr.P.C. was submitted in the trial court on 13.5.2011. The charge was

framed on 11.7.2011 but due to non appearance of the petitioners in the court, the case could not proceed further. This occurrence has nothing to

do with the FIR got registered by petitioner No. 1 for offence under Sections 406/498-A IPC against her husband, respondent No. 2, their other

relatives and the other litigation pending in between the parties.

6. Learned counsel for respondent No. 2 supplemented the arguments of learned State counsel with the submissions that the FIR in question has

been registered on the basis of the occurrence that took place on 5.3.2010. The respondent No. 2 was medically examined immediately after the

occurrence and injuries were found on his person. He had moved complaint before the police but no action was taken and ultimately after due

enquiry, FIR was registered. The case is based on the medical evidence and oral testimony of witnesses and there is no reason to quash the FIR.

7. As per prosecution version, occurrence had taken place on 5.3.2010. Vide letter dated 5.3.2010 (Annexure R2/1), respondent No. 2 had

supplied copy of MLR to the police. He gave detailed complaint on the same day vide Annexure R-2/2 and R-2/3 is the copy of the MLR which

shows that age of respondent NO. 2 was 68 years at the relevant time and the doctor noted one abrasion injury and five other injuries of complain

of pain on the person of respondent No. 2. In the enquiry by Additional Deputy Commissioner of Police (Crime), Jalandhar, the version as given

by respondent No. 2 was found to be correct and he recommended further action in the matter. The District Attorney (Legal) on perusal of the

report of the Additional Deputy Commissioner of Police (Crime), Jalandhar and other material on file had recommended the filing of challan u/s

452 IPC along with Section 323 read with Section 34 IPC.

8. The scope of interference by the High Court u/s 482 Cr.P.C. has been discussed by the Hon'ble Supreme Court in the case of State of

Haryana and others Vs. Ch. Bhajan Lal and others, which reads as follows :-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers u/s

482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such

power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be

possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list

of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of

the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,

providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive

for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with

circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an

arbitrary jurisdiction on the Court to act according to its whim or caprice.

9. In view of the observations of Hon"ble the Supreme Court, this Court is not to look into the correctness and falsity of the version as contained in

the FIR. The only fact to be seen is as to whether prima facie case on the basis of the allegations levelled by the prosecution is made out or not. In

this case, the police has not only recorded the FIR after due enquiry but has also got conducted the enquiry through Additional Deputy

Commissioner of Police (Crime), Jalandhar, who has also found the version of respondent No. 2 regarding the occurrence as correct. The trial

court has already framed the charge against the petitioners but further proceedings before the trial court got stalled in view of the order dated

21.11.2011 passed by this Court.

10. As a sequel of discussion above, this petition has no merits and is dismissed.

11. The trial court is directed to proceed further with this case and dispose of the trial by giving short adjournments. Copy of this order be sent to

the trial court forthwith.