

(1995) 09 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4070-M of 1993

Balwan

APPELLANT

Vs

Hari Chand

RESPONDENT

Date of Decision : 15-09-1995

Acts Referred:

Citation : (1996) 1 AICLR 72 : (1996) 1 RCR(Criminal) 223

Hon'ble Judges : Sarojnei Saksena, J

Advocate : Baldev Singh, Neena Madan, Advocates for appearing Parties

Judgement

Dr. Sarojnei Seksena, J.

1. Accusedpetitioner alleging that he is facing a criminal trial in which a charge under sections 279/337/304A IPC is framed against him for causing the death of Madan Lal, and again on the complaint filed by Hari Chandrespondent No. 1 on June 15, 1989, charge under sections 302/109/120B/34 IPC is also framed against him, prays for quashment of complaint Annexure P4, summoning order Annexure P5 and the charge Annexure P6.

2. Petitioner"s learned counsel contends that on the intervening night of 7th and 8th April, 1989, Madan Lal died in a road accident. At that time according to the prosecution, the petitioner was driving jeep No. DED5244 in the area of village Dhaya. In the case registered under sections 279/337/304A IPC the prosecution alleged that at the relevant time the petitioner was driving the aforesaid vehicle rashly and negligently and he dashed his jeep against deceased Madan Lal, who not only sustained grievous injuries but also succumbed to them immediately on the spot. A report of this incident was lodged by Jitender son of deceased Madan Lal on April 9, 1989. After holding investigation with regard to this FIR No. 157, the police submitted the charge sheet under sections 279/304A and 337 IPC in the Court of the Addl. Chief Judicial Magistrate, Hisar. In that case Addl. CJM Hissar has framed charges for the aforesaid offences against the petitioner and he is facing the trial. But on June 15, 1989, Hari Chand, father of the deceased, lodged the complaint Exhibit P4 alleging various facts against Satyawati, wife of

the deceased, shown as accused No. 4 in that complaint. He alleged that Satyawati was not on cordial terms with the deceased. She along with accused No. 3 Devinder Talwar hatched a conspiracy to commit murder of Madan Lal. On the fateful night petitioner accused Balwant Singh alias Balwan was driving the aforesaid vehicle in the village. In that vehicle eyewitness Ishwar Singh was sitting. Brother of Satyawati was also sitting in the said vehicle. On seeing Madan Lal on the road accused Balwant Singh and Hawa Singh said that he is the husband of Satyawati whom they are searching, whereupon accused Balwant Singh drove the vehicle at a fast speed and dashed against pedestrian Madan Lal, hitting him badly on his head. In the complaint it is also averred that thereafter Balwant Singh and Hawa Singh accused got down from the jeep to see whether Madan Lal has breathed his last, and on being satisfied they drove the vehicle again. All these facts were told to Hari Chand by Ishwar Singh.

3. Thus, according to the petitioner's counsel in connection with the death of Madan Lal the petitioner is facing a trial under section 304A/279/337 IPC and at the same time on the basis of this complaint a charge under sections 302/109/120B/34 IPC is also framed against him. The complaint lodged by Hari Chand is a concocted story. Hence the complaint, summoning order and the charge should be quashed. To buttress his contention, he has relied on *Manphool v. State of Haryana*, 1992(2) CLR 253.

4. The learned AAG, Haryana, has strongly opposed the petition and contended that no doubt in the case registered under section 304A IPC also Ishwar Singh is cited as an eyewitness and in the complaint filed by Hari Chand also Ishwar Singh is an eyewitness, but it appears that FIR No. 157 lodged by Jitender son of Madan Lal deceased on April 9, 1989, was not investigated properly. A plain perusal of the FIR indicates that even in this FIR Jitender has expressed a suspicion that his father has been murdered. But with the connivance of ASI Devinder Talwar accused No. 3 the case was registered only under sections 304A/279/337 IPC. Further, the complaint was filed earlier on June 15, 1989, while the police challan in pursuance of FIR No. 157 was filed later on. The Additional Chief Judicial Magistrate examined seven witnesses before committing the case to the Sessions Court in the complaint Exhibit P4. By a detailed order he came to the conclusion that prima facie offence under section 302 IPC is made out and thereafter he committed the case to the Sessions Court. The case registered on the basis of FIR No. 157 is also now consolidated with Sessions case pending under section 302 IPC against the petitioner. So far as the above authority is concerned, the facts are quite distinguishable.

5. From a plain perusal of FIR No. 157 lodged by Jitender on April 9, 1989, it is obvious that he too suspected that his father was murdered. If the police has not properly investigated the case and instead of registering the case under section 302 IPC, they have mildly registered the case under section 304A/279/337 IPC, it cannot be said that this was a case of vehicular death and later on the father of the deceased has falsely lodged a complaint under section 302 IPC. No doubt,

Ishwar Singh is an eyewitness in both the cases, but after examining him and weighing his evidence, the Additional Chief Judicial Magistrate committed the case to the Sessions Court. He not only examined Ishwar Singh but six more witnesses were examined by him in the complaint case and after being satisfied that prima facie it is a case of murder, he committed the case to the Court of Session. Under these circumstances, it cannot be said that this amounts to an abuse of the process of the Court or judicial mind is not applied either by the Additional Chief Judicial Magistrate, Hisar, at the time of committing the case and by the Additional Sessions Judge at the time of framing of the charge under sections 302/120B/109/34 IPC. It appears that the police in connivance with the petitioner has made the offence mild by filing a charge sheet under sections 304A/279 and 337 IPC only. At this juncture this Court is not justified in evaluating the evidence adduced in support of the complaint to arrive at a conclusion as to the genuineness of the allegations made therein. In the sessions trial the complainant's evidence is yet to be recorded. Time and against the Apex Court has held that this power of quashing FIR/complaint and criminal proceedings should be exercised sparingly by the courts. I see no reason to quash the said complaint Annexure P4, summoning order Annexure P5 and the charge Annexure P6, No merit in the petition, Dismissed.