
(1990) 09 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5418-M (O&M) of 1989

Jogesh Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-09-1990

Acts Referred:

Citation : (1993) 1 RCR(Criminal) 287

Hon'ble Judges : S.S.Grewal, J

Advocate : Arun Nehra, Sanjay Majithia, Advocates for appearing Parties

Judgement

S.S. Grewal, J. (Oral)

1. This petition Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as `the Code"), relates to quashment of FIR No. 18, dated 28.1.1989, registered at Police Station, Sadar Nabha, against the petitioner and his other four coaccused under Sections 323/325/452/427/148/149 IPC.

2. In brief, the facts relevant for the disposal of this petition, as emerge from the impugned first information report are that on 28.1.1989, petitioner, his brother Madan Lal and latter's sons Asin and Kala and Ashok Kumar, under the influence of liquor, demolished the wall of the first informant at night. This fact was disclosed to the complainant party after they were called by the petitioner and his other coaccused from inside their house. Then the complainant side was taken near the demolished wall. Thereafter, the complainant returned to his house. At that stage, the brother of the complaint questioned as to why the accused party had demolished the wall and that the matter be reported to the Panchayat. The accused party then dragged the complainant's brother and abused him. The complainant Bhim Chand tried to intervene to save his brother. Bhim Chand was given beating and the women folk of the house were also given beating. In this confusion the complainant lost his watch and the gold earrings of his wife. Complainant, his mother, women folk of the house and his brother received beating at the hands of the accused party and thereafter the accused party is said to have run away. Present petitioner who is Deputy Commandant in

the Punjab Home Guards, was also stated to be present in his uniform and after the episode he is said to have run away to Amritsar at about midnight.

3. The learned Counsel for the parties were heard.

4. By now, it is well settled that in order to quash first information report or complaint, only the allegations set out in the first information report or complaint have to be considered, and, taken at their face value for deciding, as to whether such allegations constitute, or spell out any offence. If from such allegations, no specific offence against a particular accused has been made out, and, the proceedings initiated on the basis of the impugned first information report or complaint, amount to abuse of the process of the Court, then the first information report or complaint can be quashed under Section 482 of the Code.

5. Dealing with this aspect of case, it was held by their lordships of the Supreme Court AIR 1989 SC 1, as under :

"Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations. Whether those allegations, set out in the complaint or the chargesheet, do not in law constitute or spellout any offence and that resort to criminal proceedings, would, in the circumstances, amount to an abuse of the process of the court or not."

Careful perusal of the allegations made in the first information report reveal that no specific allegation, either concerning the demolition of the wall, or causing injuries to the complainant party, are made out against the petitioner. Nor there is any specific allegation that the petitioner or his other coaccused were armed with deadly weapons, or, formed an unlawful assembly and committed the offence in pursuance of the common object of the said assembly. The way in which general allegation had been attributed to the accusedpetitioner, would not be sufficient to make out a prima facie case under Sections 323/325/452/427/148/149 IPC against him. Mere allegation that Jogesh Kumar petitioner Deputy Commandant, Home Guards, was wearing his uniform, and was present or that the accused gave beating to the complainant party, or, informed the complainant party that they had demolished the wall, would not make out a prima facie case for proceeding against the petitioner. Rather the consequent proceedings taken on the basis of the impugned first information report against the petitioner who is a responsible officer in the Home Guards, would amount to abuse to the process of the Court.

6. For the foregoing reasons the impugned first information report (Annexure P1) and the consequent proceedings taken thereunder against the present petitioner, are directed to be quashed and this petition is accordingly allowed. The trial Court would, however, proceed against rest of the accused and dispose of the case expeditiously according to law. Copy of this order be sent to the trial Court

for compliance.

JUDGMENT accordingly.