
(2015) 12 P&H CK 0135

In the Punjab And Haryana At Chandigarh

Case No : Criminal Misc. M. No. 22699 of 2014 (OandM) and Crl. Revn. No. 3636 of 2014 (OandM)

Rajinder Kaur and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 174, 190(1)(b), 226

Penal Code, 1860 (IPC) — Section 120-B, 148, 149, 302, 34

Citation : (2015) 12 P&H CK 0135

Hon'ble Judges : Anita Chaudhry, J.

Bench : Single Bench

Advocate : A.P.S. Deol, Sr. Advocate and V.R. Lamba, Advocate, for the Appellant; Deep Singh, AAG, for the Respondent

Judgement

Anita Chaudhry, J.—Rajinder Kaur and others have preferred the petition CRM-M-22699-2014 for quashing the order dated 13.03.2014 (Annexure P-21), vide which the petitioners have been summoned to face trial under Section 302 /120-B /148 /149 IPC. During the pendency of the petition, petitioner No. 3 Atma Singh has died.

2. Balbir Singh has preferred CRR-3636-2014. He is aggrieved with the order dated 18.09.2014, vide which the trial Court had discharged some of the accused who were named by him. The Court had ordered framing of charge against Rajinder Kaur and Paramjit Singh under Sections 302 /34 IPC.

3. Since both the matter arise out of the same FIR, I propose to deal with them together.

4. Giving a brief narrative first, petitioner No. 1 Rajinder Kaur is the sister of Balbir Singh complainant. Paramjit is the husband of petitioner No. 1. Atma Singh (since deceased) who was named as an accused, was the father-in-law of Rajinder Kaur. Jarnail Singh is the real uncle of the complainant and petitioner

No. 1.

5. Jeet Kaur, mother of the complainant and petitioner No. 1 owned some land in village Nangal Kalan. She was living with Rajinder Kaur for a number of years. A registered Will is said to have been executed by her on 09.02.2004. Jeet Kaur was 70 years old at the time of her death. She died on 01.06.2006. The complainant suspected foul play. The postmortem had been conducted. The viscera was sent for detection of any poisonous material. A special investigation team was formed and inquiry report Annexure P-10 was given which was approved by SP and it was decided to take the opinion of the expert in the field namely Head of the Department of the Forensic Medical Department of Guru Govind Singh Medical College, Faridkot. The record of the treatment which Jeet Kaur was undergoing prior to her death was also ordered to be sent. The Medical Board gave its opinion on 12.04.2008. Thereafter, the police took the report of DDA Legal and a cancellation report was submitted on 12.08.2008. The complainant made a statement that he did not agree with the investigation. The matter was sent back to the police for re-investigation. The police again filed a cancellation report on 03.06.2009 which was again returned to the police. For the third time, the cancellation report was submitted on 30.06.2009.

6. The Magistrate, vide order dated 31.08.2009 (Annexure P-19) took cognizance of the offence exercising powers under Section 190(1)(b) Cr.P.C. and issued warrants of arrest of the accused. That order was challenged in Crl. Misc. No. 27613 of 2009 (Annexure P-20) and the order was set aside and it was observed that the Magistrate while ordering the summoning of the accused, failed to give any reason as to why the cancellation report submitted by the Investigating Agency was not considered and it could not be influenced only with the fact that the complainant had not agreed with the cancellation report. The Magistrate was directed to pass a fresh order on the cancellation report in accordance with law. The Magistrate took cognizance, summoned the accused and committed the case.

7. The petitioners have pleaded that Jeet Kaur was suffering from diseases and was admitted in Civil Hospital, Bathinda between March, 2006 to May, 2006 and was advised dialysis and she could not recover due to old age and died on 01.06.2006 and her death was natural. It was pleaded that the petitioners themselves had given the information to the police regarding the death of Jeet Kaur for carrying out proceedings under Section 174 Cr.P.C. and postmortem was conducted and all organs were reported to be healthy, thereby denying any possibility of unnatural death. It was pleaded that no organ was congested and the body was handed over to them for cremation and the cremation ceremony was attended by large number of people and Balbir Singh complainant did not attend the ceremony despite the fact that information was given to him.

8. Delving into the background, it was pleaded that the petitioner No. 1 approached for mutation of the land on the basis of Will executed by her mother. It was then Balbir Singh started threatening to involve them in false cases and he connived with a Chemical Examiner, Patiala and got a false viscera report

prepared. It was pleaded that Dr. Kuldeep Rai started demanding money from the petitioners for a favourable report and therefore, they got the doctor arrested and a trap was laid and FIR Annexure P-9 on 07.08.2006 was registered. It was pleaded that on the next date i.e. 08.08.2006, after more than two months of the death of Jeet Kaur, Balbir Singh complainant in connivance with the doctor and as a counter blast with a view to grab the land of Jeet Kaur concocted a false story on the basis of a false chemical examiner report and gave a complete twist to the matter and got the FIR lodged saying that he was at their house at 10:00 AM that morning and he had come to inquire about his mother's health and he found his mother lying on a bed and she was vomiting and there was an empty glass of milk lying near the bed. Thereafter, all the five persons named by him stood up and went inside and when he asked his mother the reason then she disclosed that her thumb impressions had been taken on some blank papers and some poisonous substance in the milk had been added.

9. The petitioners claims that Balbir Singh had never cared for her mother during her life time and had been harassing her and did not participate in the last rites and false allegations had been levelled. It was pleaded that the police had investigated the matter not once but thrice and the same report was given. It was pleaded that they had been illegally summoned and the order be set aside.

10. The State in its reply submitted that the Court has already taken cognizance of the offence and they were not in the picture any more. The State elaborated the facts and stated that a DDR No. 12 was registered and thus they proceeded to take action under Section 174 Cr.P.C. and after postmortem, the doctor had sent the viscera for chemical examination and they had recorded the statement of the Sarpanch and other residents who had stated that the death was on account of old age and ailments. It was pleaded that subsequently the FIR was registered on the complaint made by Balbir Singh who approached the police after receipt of the Chemical Examiner's report wherein organo phosphorus compound was detected in the viscera of the deceased. It was pleaded that the complainant had stated that he was present in the house of the accused on 01.06.2006 at the time of death of his mother but he remained quiet for over two months. It was pleaded that the accused also presented representations and the matter was inquired by DSP, Bathinda. In the meantime, the complainant approached IGP Zonal, Bathinda seeking transfer of inquiry to some other officer and it was entrusted to Jarnail Singh Dhaliwal, PPS SP (Headquarters), Faridkot and in the said inquiry Dr. Kuldeep Rai, against whom allegations had been made by the complainant, was found to be innocent as his presence on the scene of occurrence was not proved. It was averred that both the parties were not satisfied with the inquiry report and they approached IGP Zonal for impartial investigation and a Special Investigation Team was constituted which gave its inquiry report on 1.10.2007 saying that the cause of death had been determined by the doctor on the basis of report of the Chemical Examiner, Patiala without waiting for the report of the doctors of the Pathology Department and it was necessary to obtain the opinion of Medical Expert about the cause of death and

report of the Chemical Examiner and the treatment record was sent to the Head of the Forensic Medical Department of Guru Govind Singh Medical College, Faridkot. It was pleaded that thereafter, medical opinion of the Associate Professor was received wherein it was reported that the postmortem report showed the viscera to be healthy and there was no signs of poisoning in the PMR and death due to poison by organo phosphorus was remote and detection of organo phosphorus compound may be a chance qualitative finding in the viscera and the hospital record shows Hypertension with Pulmonary Oedema with Diabetes Mellitus with Chronic Renal Failure, Unstable Angina, CAD at different stages of treatment from 06.03.2006 to 25.05.2006 and there was a high probability of death due to natural disease process. It was pleaded that in view of the finding of the investigation, cancellation report was filed which was not accepted and the matter was re-investigated and cancellation report was again presented and ultimately the Magistrate took cognizance of the offence keeping in view the statement of the complainant and evidence on file and the cancellation report was rejected. It was pleaded that the case was thereafter committed. It was pleaded that the trial Court heard the arguments in detail and vide a detailed order it discharged accused namely Atma Ram, Jarnail Singh and Dr. Kuldeep Rai, Medical Officer (since retired) and framed the charge against Rajinder Kaur and her husband Paramjit Singh.

11. It was pleaded that as per evidence gathered during investigation, Balbir Singh did not look-after her mother and there was long term litigation between them regarding the property owned by Jeet Kaur.

12. Respondent No. 2 in its reply pleaded that the trial Court had already framed charges against petitioners No. 1 & 2 and the remedy available to them was to challenge the order in revision. It was pleaded that the order dated 13.03.2014 had only been challenged and the order framing charge had not been challenged and the petition was not maintainable. It was denied that Jeet Kaur was happy with the services rendered by Rajinder Kaur and on that account Registered Will had been executed. It was pleaded that Will was a result of coercion and undue influence and validity of the Will was under consideration with the revenue authorities. It was pleaded that in the Chemical Examiner's report organo phosphorus compound was detected and death was not natural, rather she died of poisoning. It was pleaded that it was for the trial Court to decide and disputed facts could not be gone into in the proceedings under Section 482 Cr.P.C.

13. Balbir Singh had filed Criminal Revision No. 3636 of 2014, challenging the order dated 18.09.2014, vide which respondents No. 2 to 4 had been discharged. It may be mentioned that respondent No. 2 Atma Ram had died during the pendency of the proceedings. The petitioner claims that the dispute was between the petitioner and his sister namely Rajinder Kaur and respondent Nos. 2 & 3 were the in-laws family of Rajinder Kaur while respondent No. 4 was Dr. Kuldeep Rai who had conducted the postmortem examination on the body of Jeet Kaur. It was pleaded that he had made allegations in the FIR that some poisonous

substance had been administered to his mother and the police had recommended cancellation but respondents No. 2 to 4 alongwith Rajinder Kaur and her husband were summoned by the Additional Chief Judicial Magistrate who took cognizance of the offence. It was pleaded that the Court had passed a detailed order observing that organo phosphorus compound had been found in the viscera and there was evidence to summon the accused. It was pleaded that respondent No. 2 to 4 have been specifically named in the FIR. It was pleaded that there were two medical reports on the file and the observations made on the report of Guru Govind Singh Medical College, Faridkot was not authentic and the trial Court should have framed the charges against them as well. It was pleaded that as per the Chemical Examiner's report, death was on account of presence of organo phosphorus compound and it shows the active connivance of respondent No. 4 with the Head of the Pathology Department in Guru Govind Singh Medical College, Faridkot who sent back the viscera with the following remarks:--

"the viscera are highly decomposed, found smelling and infested with maggots due to poor and inadequate preservation. Histopathological examination of such poorly preserved tissue is not possible."

It was pleaded that the trial Court had summoned Rajinder Kaur and Paramjit Singh on the same set of allegations and it had ignored the facts that respondent Nos. 2 to 4 were present on the spot and were actively involved.

14. Notice was given to respondents. Respondents No. 3 & 4 made a statement that they did not want to file any reply.

15. Initiating the submissions, the counsel representing Rajinder Kaur and her husband had urged that Jeet Kaur was the mother of petitioner No. 1 who was old and was living with her daughter for a long period and she was suffering from age related diseases and she had died in the house on 01.06.2006. It was urged that the postmortem report does not give any reason and there were no signs of congestion and the Chemical Examiner's report found organo phosphorus compound in some exhibits. It was urged that the Head of the Pathology Department sent back the viscera to Kuldeep Rai, CMO as the viscera was highly decomposed and was infested with maggots and a Board was constituted which had given a report that the death due to poisoning by organo phosphorus compound was remote and the detection of organo phosphorus compound may be a chance qualitative finding in the viscera. It was urged that the brother of petitioner No. 1 lodged the FIR after two months. It was urged that the deceased was in hospital from 06.03.2006 to 09.03.2006 and referred to the inquiry report and the history of the ailments contained in the Medical Board's report and that Jeet Kaur had been referred to a nephrologist for opinion on dialysis. It was urged that Jeet Kaur was again admitted in the hospital on 11.05.2006 with coronary artery diseases with unstable angina and she was presented with vomiting and restlessness and was discharged on 12.05.2006 and she was admitted again on 25.05.2006 and she was diagnosed with CAD with Left Ventricular Failure. It was urged that the Board containing the senior most

Associates of Department of Forensic Medicine, Guru Govind Singh Medical College, Faridkot had given an opinion that there were remote chances of death on account of poisoning. It was urged that the mother had been in and out of the hospital since March and the last visit was on 25.05.2006 and based on that the police had filed cancellation report. It was urged that the mother had executed a Will in favour of the daughter in 2004 which is a Registered Will and the mother and son were litigating and the son did not attend the cremation. The counsel had referred to the copy of the Will Annexure P-7 executed on 09.02.2004. It was urged that Jarnail Singh was signatory to the Will, therefore, he has been named along with the petitioner who is the husband. The counsel had referred to the complaint made by Jeet Kaur against Balbir Singh. It was urged that the Magistrate did not accept the cancellation report and the matter was re-investigated and again cancellation report was filed and the complainant did not agree with the report and the Magistrate again sent it back for re-investigation and finally the third cancellation report Annexure P-18 was submitted on 30.06.2009. It was urged that the Magistrate took cognizance which was challenged and the order dated 31.08.2009 was set aside. It was urged that the Will has not been challenged by the son in the Civil Court and the complainant will not be able to go beyond what is available on the record and it was a chance that organo phosphorus compound was found and it could be because of the high content of pesticides in our foods but the experts have answered it and had given an opinion that the cause of death could not be on account of poisoning and the conclusive report cannot be ignored. It was urged that the complainant had lodged an FIR against Kuldeep Rai and an inquiry had been held and Kuldeep Rai had been found to be innocent and his presence was not found in the house and the Court below had no material to frame the charge and the prosecution case rests upon flimsy foundation. Reliance was placed upon Dilawar Balu Kurane Vs. State of Maharashtra, .

16. On the other hand, the submission made on behalf of the complainant was that the complaint contains clear allegations against the petitioner as the complainant had come to the house of Rajinder Kaur to meet his mother and Kuldeep Rai was present in the house and he is the one who had conducted the postmortem examination and gave a wrong report that all organs were healthy and the report was made in connivance with Rajinder Kaur. It was urged that Rajinder Kaur had lodged an FIR Annexure P-9 against the same doctor for demanding Rs. 10,000/-. It was urged that the inquiry report would show that the comment made by the Assistant Professor for not adding the requisite percentage of preservative in the viscera specimens, therefore, the viscera specimens had been destroyed and there are disputed questions which can only be considered by the trial Court after the evidence is led and the proceedings cannot be quashed. It was urged that Kuldeep Rai and Jarnail Singh have wrongly been discharged and they were also named and the order be set aside qua them.

17. Responding to the submissions, the counsel for the petitioner Rajinder Kaur

and others had urged that two separate samples had been sent and one sample was sent to Chemical Examiner, Patiala and the other to Faridkot and the report from Patiala had been received and the sample sent to Faridkot could not be tested and these are mere assumptions and the trial cannot proceed on the basis of suspicion. It was urged that Kuldeep Rai was found on duty from 9:00 AM to 5:00 PM. It was submitted that the complainant and Jeet Kaur were in litigation. The counsel had referred to the Annexure P-1, which was pending in the High Court. He had urged that the son did not feel shy and had initiated contempt proceedings against his mother and they were litigating since 1999 and ultimately the petition was withdrawn in 2005 after the death of Jeet Kaur. Counsel had also referred to notice Annexure P-3 on behalf of the complainant to Jeet Kaur, Rajinder Kaur and her husband Paramjit Singh.

18. It is necessary to first refer to State of Haryana and others Vs. Ch. Bhajan Lal and others, , which deals with a series of decisions relating to the exercise of extra ordinary power under Section 226 Cr.P.C. or the inherent powers under Section 482 Cr.P.C., it gives the guidelines and an extensive list of the kind of cases wherein such power should be exercised:--

"105. 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 Under Section 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 Under Section 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 Under Section 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."

19. It is now to be examined as to whether the case falls under any of the principles laid down in Bhajan Lal's case (supra) and whether the continuation of the proceedings would only result in abuse of process of law.

20. Coming to the factual matrix, it is not in dispute that Jeet Kaur was living with her mother. The mother and her son i.e. the complainant had been litigating in the Courts since 1999 as is evident from Annexure P1 to P6. There was a dispute relating to the land measuring over 11 acres. Jeet Kaur was apprehending threat to her life and had also complained to the Governor of Punjab in 1998 and thereafter, cases were filed and the matter was also reached the High Court. Jeet Kaur was over 70 years of age. The Inquiry report refers to the number of visits made to the hospitals from March, 2006 onwards. Jeet Kaur was suffering from chronic renal failure. She was advised dialysis and was referred to nephrologist. Jeet Kaur had remained in the Civil Hospital in the ICU ward from 06.03.2006 to 09.03.2006. The hospital records had revealed that it was a case of chronic renal failure. She was got discharged on request on 09.03.2006. She was again admitted in the hospital on 11.05.2006. There were symptoms of vomiting and restlessness. She was again discharged on request on 12.05.2006. She was again taken to the hospital on 25.05.2006. Six days later she died. The son made the complaint two months later. He did not attend the cremation ceremony. In his complaint he had alleged that he had gone to his mother and had found the Chief Medical Officer at his sister's house and all the other accused by her bed side and there was an empty glass of milk and his mother was vomiting and when he asked the reason, all the accused left the room and he suspected that she had been given some poisonous substance in milk.

21. The presence of Dr. Kuldeep Rai was not found in the house that day. A detailed inquiry was held and he was found to be in the hospital. The report given there was accepted by the Court.

22. What weighed with the trial Court was the presence of organo phosphorus pesticide reported by the Chemical Examiner. The report of the Chemical

Examiner was given on 10.07.2006. The complainant lodged the complaint on 07.08.2006. In the inquiry, there is a reference that the complainant had alleged that there was ink on the thumb of his mother and he feared that some forged document has been prepared. The postmortem report or any other report did not refer to such thing. On receipt of the Chemical Examiner's report and since both the sides were making complaints to the senior officers, the SSP, Bathinda on 13.03.2008 sought the Expert's Opinion and a Board constituting the Additional Professor and one Associate Professor of the Department of Forensic Medicine of Guru Govind Singh Medical College, Faridkot was formed. The Medical Board examined the entire material containing the treatment report, the postmortem report, the Chemical Examiner's report and noted that had the patient died on account of poisoning then the viscera at the time of autopsy would have shown signs of congestion. The lips, finger and toe should have shown signs of cyanosis which was not there. It had noted that the doctor who had conducted the autopsy had found the viscera healthy and there was no description of any content or any sort of smell in the clothes or in the stomach. It also dealt with the report of the Chemical Examiner and observed that presence of organo phosphorus compound was only qualitative and the report did not mention that qualitative analysis had been carried out. Based on the opinion, successive cancellation reports had been submitted in the Court but the matter was again sent back to the police for reinvestigation and the third cancellation report was submitted whereafter the Magistrate took cognizance and issued warrants of arrest. The summoning order was challenged by way of writ petition. The order was set aside and the Magistrate was directed to pass a fresh order. The Magistrate thereafter, passed another order and committed the case and thereafter, the charge had been framed. The petitioners had placed the order Annexures P-23 and P-24 which had been passed after the filing of the petition.

23. The power under Section 482 Cr.P.C. is to be exercised to prevent the abuse of process of Court but it cannot be exercised to legitimate prosecution nor the High Court can assume the role of a trial Court and embark upon an inquiry as to the reliability of the evidence and setting up of the accusations. This power has to be exercised sparingly with caution and circumspection. It is also settled that Court does not function as a Court of appeal or revision but the exercise is justified by the test specifically laid down in Section 482 Cr.P.C. It is important to bear in mind a discretion between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusation made and a case where there is legal evidence which on appreciation may or may not support the accusations. While exercising jurisdiction, the High Court would not ordinarily embark upon an inquiry where the evidence is reliable but judicial process should not be used as an instrument of oppression or needless harassment.

24. In State of Andhra Pradesh Vs. Golconda Linga Swamy and Another, the apex court reiterated the position of law with regard to the scope and power of Section 482 Cr.P.C and held that the inherent jurisdiction though wide has to be

exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in Section 482 . It was further held that the power should not be exercised to stifle legitimate prosecution and the High Court should not assume the role of a trial court and embark upon an enquiry as to reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence. It was held that that if on consideration of the allegations in the light of the statement made on oath of the complainant or made in FIR it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, the proceedings cannot be quashed; but when it appears to the contrary, interference by High Court would be justified.

25. If the allegations set out in the complaint are examined and the material collected by the prosecution namely the report given by the Medical Experts is considered, it appears that the complaint is vexatious. The Experts had opined that the death was not on account of poisoning. The postmortem report says that the organs were not congested. The record reveals that the son had engaged the mother in various litigations. There was a dispute with respect to the property. Jeet Kaur had executed a Will in 2004 in favour of the daughter. The prosecution will not be able to ignore the conclusive report given by the Medical Board. It is a fit case where the complaint on which the cognizance has been taken by the Magistrate and subsequently committed, should be quashed including the charge framed subsequently by the Additional Sessions Judge. The investigations clearly show that there was no material with them to file a challan and they had filed cancellation report. Allowing the proceedings to continue would be an abuse of the process of the Court and it is a fit case where the extra ordinary jurisdiction of quashing the proceedings even after charge are made out. The present case is evidently a case of that nature that falls under the exceptions.

The petition CRM-M-22699-2014 is allowed and CRR-3636-2014 is dismissed.