
(1998) 05 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 89 of 1998

Roopa	Vs	APPELLANT
Puran		RESPONDENT

Date of Decision : 27-05-1998

Acts Referred:

Citation : (1998) 3 AICLR 120 : (1998) 3 RCR(Criminal) 667

Hon'ble Judges : R.L.Anand, J

Advocate : Gopi Chand, P.L. Verma, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. This is a criminal revision and has been directed against the order dated 28.8.1997, passed by the Court of Additional Sessions Judge, Faridabad, who set aside the order dated 20.11.1996 vide which the learned Magistrate found a prima facie case against the petitioner u/ss. 148, 452, 379 and 506 IPC, read with Section 149 IPC.

2. Shri Roopa filed a complaint against the petitioner on the allegation that he had purchased two plots, one from Bishandas and the other from Badal S/o Umrao and constructed his house on the said plots and he had been in possession of the said house since 1966. It was alleged that the Gram Panchayat had instituted a civil suit for permanent injunction against him in the court of Assistant Collector Ist Grade, Ballabgarh, which was dismissed, on account of that Puran, Sarpanch, was on inimical terms with him and he had threatened him with dire consequences. The complainant further alleged that on 2.10.1989 at about 8 A.M., Puran accompanied by other accused entered his house and attacked him. All the accused started abusing and gave beatings to him and his wife with fist and lathi blows and his household articles were forcibly taken away by the accused. It was further alleged by the complainant that the occurrence in question was witnessed by Cheti, Duli and Radhey. The matter was brought to the notice of the police but no action was taken against the accused. Hence this complaint was instituted.

3. In preliminary evidence, the complainant examined himself as PW1, Radhey as PW2 and Chetiram as PW3. After considering the preliminary evidence, the respondents were summoned u/ss. 447, 452, 504 and 506 read with section 34, IPC. In the precharge evidence, the complainant himself appeared as PW1 and testified that on 2.10.1989, Puran along with the remaining accused, armed with lathis and guns came to his house and gave threat to kill him and thereafter started beating him and his wife. It was further stated by the complainant that the accused took away household articles and bricks from his house and the said occurrence was witnessed by Cheti and Radhey. He testified that the matter was brought to the notice of the police but no action was taken against the accused. The statement of PW1 was corroborated by PW2. PW Duli was given up by the complainant at that stage and the precharge evidence was closed.

4. The learned Magistrate after considering the statements and after recording his reasons in para7 of the order dated 30.11.1996, came to the following conclusion in para8 of the order :

"Keeping in view the above mentioned discussion, it prima facie reveals that accused persons constituted unlawful assembly and in prosecution of common object of that assembly committed the offences of rioting, house trespass by entering into the house of complainant having preparation to cause hurt, gave criminal intimidation to Roopa to cause his death and furthermore, committed theft of household articles belonging to complainant. Therefore, prima facie case under Sections 148, 452, 379 and 506 IPC read with section 149 IPC has been made out against the accused and they are liable to be chargesheeted accordingly."

5. Aggrieved by this order, the respondents filed a revision in the court of the Additional Sessions Judge, Faridabad, who vide the impugned order dated 28.8.1997 set aside the order of the learned Magistrate by incorporating the reasons in paras 8 to 9 of the order and finally in para20 of the impugned order, it was held as under :

"In a criminal complaint, in order to frame charge, the precharge evidence on file should be such as if goes unrebutted could warrant the conviction of the accused. In this case, the precharge evidence as discussed herein before, was not such as could have warranted the conviction of the accused even if it had gone unrebutted. In this view of the matter, it could not be taken that there was a prima facie case against the accused so as to frame charge against them."

6. This time the complainant Roopa was aggrieved by the order dated 28.8.1997 and hence this revision.

7. I have heard Mr. P.L. Verma, Advocate, for the petitioner and Mr. Gopi Chand, Advocate, on behalf of the respondents and with their assistance have gone through the record of the case.

8. The solitary argument, in which I find sufficient force, raised by the counsel

for the petitioner, was that the revisional court had exceeded its jurisdiction in passing the impugned order. The language and tenor of the order is that as if the learned Additional Sessions Judge was sitting as a court of appeal. The learned counsel for the petitioner submitted that for the purpose of framing a charge, the requirement of section 240, Cr. P.C., was supposed to be complied with and to that extent the revisional court itself admitted this proposition of law but in certain paras of the judgement, the revisional court has touched the issue as if it was passing the judgment in appeal.

9. On the contrary, the learned counsel for the respondents submitted that the revisional court did not exceed the jurisdiction; rather the complaint was nothing but an abuse of the process of law on the part of the petitioner. In order to save the time of the court and the litigant public, the observations made by the learned Additional Sessions Judge, Faridabad, have been correctly made. The learned counsel for the respondents relies upon paras 8 to 19 of the order of the learned Additional Sessions Judge and I would like to narrate in verbatim these paras in order to appreciate the contention raised by the counsel for the respondents :

"8. As alleged in the complaint, the occurrence had taken place on 2.10.1989. The complaint was then filed on 9.12.1989. This delay of about 21/4 months has not been satisfactorily explained by the complainant in his complaint or in his statement. No doubt the complainant alleged in the complaint that he could not file the complaint on account of strike by lawyers. The above version narrated in the complaint is not worth believing as while appearing as his own witness as PW1, he nowhere substantiated his above claim, nor did he produce any other evidence to establish the factum of strike by the lawyers for such a long period. Thus, it can be easily inferred that the complaint was filed by the complainant after a considerable long period of 21/4 months of the occurrence. This inordinate delay certainly casts a shadow on the truthfulness of the allegations levelled in the complaint.

9. Further the testimony of the complainant and his witnesses is not consistent. The same is also not in consonance with the version narrated in the complaint and the statement made by the complainant and this witness at the time of preliminary evidence. Such like discrepant statements can hardly be believed, particularly when there is no medicolegal evidence to support the complainant that he was given severe beatings by the accused with lathis and fist blows. Some of the glaring discrepancies which go to demolish the whole case of the complainant can be highlighted as follows :

10. PW2 Radhey at the time of his examination during preliminary evidence stated that Sarpanch and other Panchayatwalas had come on a tractor and attacked the complainant at his house. In view of his above statement, the nine coaccused and other than Puran must be members of the Panchayat but they have not been proved to be as such as this PW2 Radhey at the time of pre charge evidence admitted that the accused were Puran and his family members.

This contradiction in the statements made by this PW2 at two intervals clearly shows that he is an interested witness. This fact is further established when this PW2 admitted in his crossexamination that his son Ran Singh had fought election against Puran. Obviously Ran Singh lost the election of the Sarpanch and on that score, this PW2 must have been feeling aggrieved against accused Puran.

11. Furthermore, it was alleged in the complaint that the accused demolished the complainant's house and took away its debris. When examined as his own witness as PW1, this complainant nowhere stated that his house as such was demolished. He only stated that his household goods were broken by the accused. This contradiction further creates a doubt in the story propounded by the complainant.

12. Further, the complainant nowhere alleged in the complaint that any of accused was armed with a gun when he was attacked. PW3 Chet Ram at the time of his examination stated that one of the accused was also armed with a gun. Surprisingly, the name of such accused, who was armed with gun, has neither been mentioned in the complaint nor in the statement made by the complainant or other witness (PW2). This further shows that the statements of the PWs are not worth giving credence.

13. Furthermore, complainant himself stated in his crossexamination that he was given 5/7 lathi blows whereas his wife was given 12 lathi blows. It was further added by him that one brick blow was given on his face and for those injuries, he had got himself medicolegally examined. In case the injuries were inflicted upon the person of the complainant as above, I fail to understand as to how the complainant did not place on file his MLR when he had got himself medicolegally examined. Absence of any medicolegal report creates a doubt in the case of the complainant.

14. The complainant admitted in his crossexamination that Dy. S.P. had come in the village to enquire about the incident and he had found the case to be false. In view of this admission of the complainant, it clearly comes out that after investigation and thorough enquiry by the police also, the story put forth by the complainant was also found to be unfounded.

15. Otherwise also, the allegations levelled in the complaint do not inspire confidence at all. PW2 Radhey stated that the household goods of the complainant were taken away by the accused on donkeys. He further stated that it was winter season at that time. If this statement of PW2 is taken to be correct, the version narrated in the complaint stands falsified. It was nowhere alleged in the complaint that the household goods were taken away by any of the accused on donkeys or the occurrence had taken place in winter season. On 2.10.1989 when the occurrence is alleged to have taken place, it could not be taken to have been winter season. This statement of PW2 further creates a doubt in the complainant's claim.

16. Be that as it may, neither the complainant nor his other witness PW2 Radhey

have specifically attributed anything to any of the accused. No injury has been attributed to any of the accused nor any specific act done by them has been brought on file. Mere vague statements of the PWs that the accused attacked the complainant at his house, demolished his house and then took away the material from there are not worth believing.

17. It shall also not be out of context to mention here that neither the complainant nor PW2 Radhey could give the name of the driver who was driving the tractor which was brought by the accused. They could not give the name of the person who was holding the gun. They did not mention the names of the accused who were armed with lathis and the accused who were empty handed. They also could not give the names of the person who had brought their donkeys for taking away household goods and debris from the complainant's house. In this view of the situation, it is hard to believe the testimony of such witnesses, particularly when enmity of the complainant with accused Puran is admitted by him. He was certainly aggrieved with accused Puran, who was Sarpanch of the village, as Sarpanch had initiated ejectment proceedings against him. This must have led the complainant to file this unfounded complaint against the accused Puran and his other family members and nears and dears who have been arrayed as coaccused.

18. Besides all that which has been discussed hereinbefore, the complainant himself nowhere stated that any of the accused had extended threat to his life at any point of time. Likewise, PW2 Radhey also had nothing to state in this regard. Thus the provisions of Section 506 IPC are not at all attracted in this case.

19. More so, the complainant has not been able to place on file any title deed with regard to the land on which he is alleged to have raised construction of his house. He has specifically alleged in the complaint that he had purchased this land prior to the year 1966 but he has not been able to prove his title with regard to the land or the house. When the plaintiff had not been able to prove the ownership of his house alleged to have been attacked by the accused, provisions of Section 452 IPC are not at all attracted. In the same way when no theft of any specific items has been proved to have been committed by the accused, there was no material for learned trial court to order the framing of charge against the accused vide impugned order."

10. The learned counsel for the respondents even did not lag behind and relied upon a judgment of the Hon'ble Supreme Court reported in *Satish Mehra v. Delhi Administration*, 1996(3) RCR 410 . His specific reliance was on paras 14 and 15 of the judgment which I would like to quote as follows :

"14. The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the court shut it out

saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

15. But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the sessions courts in India are under heavy pressure of workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or nip the proceedings at that stage of Section 227 of the Code itself."

11. After considering the rival contentions of the parties, I am of the opinion that the learned Additional Sessions Judge, Faridabad, had exceeded his jurisdiction in deciding the controversy. There are two stages; one under Chapter XVI and the other under Chapter XIX, when the Magistrate exercises his jurisdiction for the summoning of the accused and for framing of the charge respectively. Here is a case which was instituted otherwise than on a police report. According to Section 204, Cr.P.C., appearing in Chapter XVI, if the Magistrate after taking cognizance of the matter finds that there are sufficient grounds for proceeding against the accused, he has the right to summon the accused. The second stage will come after recording the precharge evidence led by the complainant and, in these circumstances, the provisions of section 245, Cr.P.C., are supposed to be interpreted. As per this section, if, upon taking all the evidence referred to in section 244, the Magistrate considers for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Now, it is to be seen whether the precharge evidence which was led by the complainant before the learned Magistrate, if remained unrebutted, would not warrant conviction. In this regard, I would like to refer to para 3 of the order of the learned Magistrate, which clearly indicates that the allegations of the complainant were not only corroborated by the complainant himself but also by the eye witnesses. It is the specific case of the complainant that the respondents trespassed his house and caused injuries and took away the household articles. The complainant, in these circumstances, was the best witness. His statement is fully corroborated.

12. How under these circumstances, it can be said that the complaint was nothing but an abuse of process of law or that the complainant wanted to waste the time of the court or the society. It was beyond the jurisdiction of the learned revisional court to give a finding of acquittal in favour of the respondents. He had a limited scope at that time to find out whether the evidence which was led by the complainant on the record if remained unrebutted could warrant a conviction or not. In *Krishan Pal Singh Chauhan v. State of Haryana*, 1997(4) RCR 683, this court had the occasion to go through the case law propounded by the Hon'ble

Supreme Court and by various High Courts and the observations of the court were that the Magistrate is duty bound to frame charge if there is ground to presume that accused committed the offence. It was further observed that the evidence against the accused may be weak but sufficiency of that evidence whether it would end in conviction or acquittal is not supposed to be seen by the Magistrate at that time. Even though the accused may have a defence but the same has to be left to be decided at an appropriate forum. If this rule of law as interpreted by this court is applied to the facts in hand, I am of the clear view that the learned Additional Sessions Judge committed a patent illegality which caused manifest injustice to the petitioner when the learned Additional Sessions Judge allowed the revision and set aside the order of the learned Magistrate.

13. Resultantly, I allow this revision and set aside the order of the learned Additional Sessions Judge and give directions to the learned Magistrate to proceed against the accused according to law from the stage when that complaint was dismissed.

The parties through their counsel are directed to appear before the learned Magistrate on 3.7.1998.

Revision allowed.