

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Crl.Misc.No. M-12880 of 2008

Date of decision: 29.10.2009

Gurdeep Singh and another

... Petitioners

versus

Dara Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE JORA SINGH.

Present: Mr.Liaquat Ali, Advocate,  
for the petitioners.  
Mr.S.P.Soi, Advocate,  
for the respondent.

...

JORA SINGH, J.

Gurdeep Singh and Balwinder Kaur filed this petition under Section 482 Cr.P.C. for quashing of complaint dated 9.2.2006 (Annexure P-1) filed by Dara Singh, and summoning order dated 8.4.2006 (Annexure P-2).

Respondent Dara Singh filed complaint under Sections 323/324/341/506/365/34 IPC against Gurdeep Singh, Balwinder Kaur, Manjinder Singh and Satwinder Singh, on the allegation that Gurdeep Singh is serving as an ASI in the police department. On 29.5.2005 at about 6.30 AM, the complainant was constructing water channel in order to irrigate his fields, then Gurdeep Singh armed with datar came out of his house situated near the place of occurrence and directed the complainant not to construct the water channel. Complainant replied that he will stop after completing the water channel. Then Gurdeep Singh gave two datar blows to the complainant. Complainant raised a raula and on hearing raula, accused Balwinder Kaur, Manjinder Singh and Satwinder Singh, armed with

dangs/sotas, came to the spot. Complainant had scuffled with Gurdeep Singh, then Balwinder Kaur, Manjinder Singh and Satwinder Singh, armed with dangs, gave blows on the person of complainant. Complainant was dragged upto 50 yard by the accused towards their house to illegally confine.

Notice of motion was issued.

Respondent appeared and filed reply to the effect that the petitioners had attacked the answering respondent, and in order to save their own skin, Gurdeep Singh, who is serving as an ASI in the police department, got FIR No.112 dated 29.5.2005 under Sections 323/324/341/506/34 IPC registered against the answering respondent. The respondent was admitted in the hospital and on 30.5.2005, his statement was recorded. DDR No.40 dated 30.5.2005 was recorded by the police, but no action by the police because Gurdeep Singh is serving as an ASI in the police department. Ground available to Manjinder Singh is not available to the petitioners.

Learned counsel for the petitioners argued that FIR No.112 dated 29.5.2005 under Sections 323/324/341/506/34 IPC was registered against the respondent at the instance of Gurdeep Singh, but respondent Dara Singh in connivance with the police officials got recorded DDR No. 40 dated 30.5.2005 as a counter blast to FIR No.112 dated 29.5.2005. As per DDR, story is different than the story put forward as per complaint (Annexure P-1). Allegation of the respondent is that Manjinder Singh and Satwinder Singh, sons of Gurdeep Singh, also gave blows, but this fact is not correct one because Manjinder Singh was in foreign country w.e.f. 9.4.2005 to 25.9.2005. Manjinder Singh had filed petition under Section

482 Cr.P.C. for quashing of complaint and summoning order and the petition was accepted vide judgment dated 4.12.2007 (Annexure P-3). Petitioners moved an application to SSP, Jalandhar, for enquiry on the allegation that injuries noted on the person of Dara Singh are self suffered and self inflicted. Enquiry was conducted by the DSP. DSP submitted his report to the effect that the complainant himself admitted that they had not inflicted any injury to anybody and no party received any kind of injury. In view of quashing of complaint at the instance of Manjinder Singh, complaint and summoning order qua the petitioners may also be quashed.

Learned counsel for the respondent argued that Gurdeep Singh is serving in the police department as an ASI. Respondent was constructing water channel, then opposite party came and had caused injuries to the respondent. DDR No.40 dated 30.5.2005 was got recorded but till today no action by the police. FIR No.112 dated 29.5.2005 was registered against the respondent at the instance of Gurdeep Singh, who is serving in the police department.

Ground for quashing of complaint available to the Manjinder Singh is not available to the petitioners. Allegation of Manjinder Singh is that he along with his brother Satwinder Singh was in foreign country, but copy of passport of Satwinder Singh was not produced to show that Satwinder Singh was in foreign country. Gurdeep Singh is serving in police department, so no question of getting DDR No.40 dated 30.5.2005 registered against Gurdeep Singh and others with the connivance of police officials. Without evidence, very difficult to opine that FIR No.112 dated 29.5.2005 was rightly registered and DDR No.40 dated 30.5.2005 was got registered by Dara Singh with the connivance of police officials. Dispute is

as to which party had caused injuries. Whether statement of Dara Singh is correct one or of Gurdeep Singh. When there is a disputed question of law and facts, then petition under Section 482 Cr.P.C. is not to be accepted.

Annexure P-1 is the copy of complaint at the instance of Dara Singh. Allegation of Dara Singh is that on 29.5.2005 at 6.30 AM, Gurdeep Singh and others had caused injuries to him. Dara Singh was medico legally examined and in view of the statement of Dara Singh, DDR No.40 dated 30.5.2005 was registered.

Admittedly, on the basis of DDR No.40 dated 30.5.2005, no action by the police. Then private complaint (Annexure P-1) was instituted by Dara Singh. Annexure P-2 is the copy of summoning order dated 8.4.2006.

Submission of learned counsel for the petitioners is that on 29.5.2005, respondent party had committed the crime. DDR No.40 dated 30.5.2005 was got registered by Dara Singh with the connivance of police.

As per the petitioners and respondent, occurrence is dated 29.5.2005. Qua occurrence dated 29.5.2005, FIR No.112 dated 29.5.2005 was registered against Dara Singh and others. Qua the same occurrence, DDR No.40 dated 30.5.2005 was registered at the instance of Dara Singh against the opposite party. Evidence is required to opine as to whether allegations of the petitioners or the respondent are correct one.

Manjinder Singh had filed petition under Section 482 Cr.P.C. for quashing of complaint (Annexure P-1) on the allegation that on 29.5.2005, he was out of India. Ultimately, petition filed by Manjinder Singh for quashing of complaint was accepted vide judgment dated 4.12.2007 (Annexure P-3).

In the present petition under Section 482 Cr.P.C., no allegation of the petitioners that they were out of India on the day of occurrence. Copy of passport of Satwinder Singh was not produced to show that he was out of India on the day of occurrence. Registration of FIR No.112 dated 29.5.2005 at the instance of Gurdeep Singh shows that the petitioners were present at the time of occurrence. Only dispute is as to which party was the aggressor. In case Satwinder Singh was also out of India on the day of occurrence, then why no petition for quashing of complaint by Satwinder Singh. In case name of one of the accused is wrongly disclosed while getting the FIR registered, then entire story is not to be ignored. After evidence, the Court is to see as to which of the accused was present at the time of occurrence, or which party was the aggressor, and to decide this question, evidence is required from the side of the petitioners and respondent.

FIR or the complaint is to be quashed if as per allegation in the FIR or the complaint, the Court is of the opinion that without any evidence, prima facie no offence is made out, taking the allegation in the FIR or the complaint to be correct one.

Registration of FIR No.112 dated 29.5.2005 against the respondent party and DDR No.40 dated 30.5.2005 at the instance of Dara Singh respondent and ultimately, Complaint (Annexure P-1) when no action was taken by the police, then without evidence, the Court cannot opine that prima facie, no offence is made out as per allegation in the complaint if taken to be correct one.

When there is mixed question of law and facts, particularly when no plea of the petitioners that they were out of India on the day of occurrence, then with the quashing of complaint at the instance of

Manjinder Singh vide judgment (Annexure P-3), complaint (Annexure P-1) cannot be quashed, because as discussed earlier, evidence is required to show as to whether allegations of the respondent are correct one or the allegations of Gurdeep Singh petitioner are correct one.

In view of all discussed above, petition being without merit is dismissed.

29.10.2009  
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**( JORA SINGH )**  
**JUDGE**