

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No. M- 26659 of 2010
Date of decision:- 28.2.2011**

Vijay Kumar and others

...Petitioners

Versus

C.B.I. and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Naveen Chopra, Advocate
for the petitioners.

Mr. P.S. Virk, DAG Haryana.

RITU BAHRI J.

This petition under Section 482 of the Code of Criminal Procedure is for issuance of writ to protect the life and liberty of the petitioners and his family members.

The prayer has been made to transfer the investigation of FIR No.242 dated 27.6.2009 under Sections 323,506,148 and 149 IPC and subsequently added Section 307 IPC, registered at Police Station Indri Bhutana, District Karnal to CBI.

The petitioner has raised a dispute and sought clarification of three MLRs appended as Annexures P-2 dated 26.6.2009, P-3 dated 1.7.2009 and P-4 dated 28.7.2009.

Brief facts of the case are that there was a fight between the petitioners and complainant party and cross cases were registered against the petitioners and the complainant party. As per the MLR dated 26.6.2009 all the injuries were simple in nature, caused by blunt weapon.

On 27.6.2009 an FIR was registered against the petitioners under Sections 148,149,323 and 506 IPC. Cross case was registered against both the parties.

As per MLR from a private nursing home, the injuries suffered on the person of Kuldeep Singh were grievous in nature. Relevant portion reads as under:-

"Kuldeep Singh has been examined by me. Found to be sharp cut wounds caused by probably sharp weapon. Nature of injury is grievous. Original X-ray report has been handed over to police."

Thereafter, Section 326 IPC was added and petitioners remained in judicial custody for about two months. On an application, made by the complainant, a fresh re-medical examination was conducted by a Board of Doctors, Civil Hospital, Karnal, who gave its report as Annexure P-4. In the report the following observations were made :-

"There is a healed scar on the dorsum of the nose in lower 1/3rd part and a healed scar on the upper side of upper lip. X-ray nasal bones, X-ray lips, X-rays Mandible were advised. As per x-ray report No.3513 dt. 27.7.09, "No Fracture Seen". As per MLR both the injuries No.1 and 2 are lacerated wounds and the kind of weapon used is blunt."

After this report Section 326 IPC was deleted from the FIR and Section 325 IPC was substituted. Thereafter Board of four Doctors constituted at PGIMS, Rohtak, which gave a report (Annexure P-5) on 02.12.2009. The opinion of the Board is reproduced below:-

"On radiological examination a chip fracture was found on right incisor bone and oblique fracture of right maxillary alveolus involving

root of right lateral incisor alongwith fractured root of left maxillary incisor. The corresponding fracture of the right nasal bone was also visible in the previous x-rays brought by the police vide No. R 3513 dated 27.07.09. Earlier reports were showing that the septum had been bleeding profusely."

Opinion

"After perusal of the MLR, bed head ticket and observations made by the undersigned, the board is of the opinion that the injuries over the face, nose externally and internally as described were caused by sharp heavy cutting weapon and would have been dangerous to life."

After this report, the police inserted Section 307 IPC in the FIR against the petitioners. On the application made by the complainant, the investigation was transferred to Rohtak from Karnal.

Mr. Naveen Chopra, learned counsel for the petitioner vehemently argued that a perusal of all the four MLRs show that the medical opinion has not been consistent, the petitioner will be facing a trial under Section 307 IPC. Learned counsel for the petitioner prays that a fresh report be sought from an independent institute like PGI, Chandigarh.

In compliance of order dated 14.1.2011, the report was received from the institute of PGI after the injured Kuldeep Singh son of Sardar Harbans Singh appeared before the constituted Board of PGI. As per this report, CT scan was conducted on the skull of Kuldeep Singh. He was examined by the board of Dental Department, Department of Oral medicine, Department of Radio-diagnosis, Department of Orthopaedics, Department of General Surgery and Department of Otorhinology. The investigation shows that there are mild deformation of right nasal bone with deviated nasal septum towards left side.

No definite fracture seen in current radiological investigations.

The injured Kuldeep Singh was examined on 15.2.2011 whereas he had suffered the injuries on June 2009. In the trial Court, the challan was presented on 16.11.2010.

Without expressing any opinion on the report submitted by the PGI, the file is being sent to the Court of Illaqa Magistrate to enable the petitioners and respondents to take all the pleas at the time of framing of charge.

Criminal miscellaneous petition is disposed of with the above observations.

28.2.2011
Vijay Asija

(**RITU BAHRI**)
JUDGE