

Durgesh And Ors vs State Of Haryana And Anr on 4 December, 2019

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30970-2016

Date of Decision : 04.12.2019

Durgesh and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Vivek Saini, D.A.G. Haryana
for respondent No.1.

Mr. Gurinder Pal Singh, Advocate
for respondent No.2.

ARUN KUMAR TYAGI, J.

The petitioners-Durgesh, Devraj, Guddu and Rajjo have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.) for quashing of application dated 30.07.2016 under Section 340 of the Cr.P.C. filed by respondent No.2 along with order dated 01.08.2016 passed by learned Additional Sessions Judge, Faridabad whereby the said application was marked to the SHO, Police Station Central Faridabad for initiating inquiry against the petitioner.

Briefly stated the facts giving rise to the filing of the present petition are that complainant-Savita w/o Chajjan Singh submitted written complaint dated 06.07.2016 to the SHO, Police Station Old Faridabad in which she alleged that on that date when she was cleaning the door of her house, accused-Durgesh, Devraj, Guddu, 1 of 14 Rajjo, Nishant and Naveen, who were having knife, swords, lathis and brickbats in their hands, assaulted her. Guddu kicked her in her stomach, Devraj punched her in the chest and kicked on her back and gave blows on her head with lathis, brickbats and rods. They also pelted brickbats on her daughter as well as the small children in the house. Devraj was making lewd gesture towards her daughter and her daughter-in-law. Devraj has installed cameras in his house and one of the camera is facing towards the upper room of her daughter and he continuously keeps watching her daughter. On 04.07.2016 at about 6:00 p.m. three persons came

out of the house of Devraj and started making lustrous gestures towards her daughter and her daughter-in-law from the roofs on their house along with clicking of photographs from their mobile phones. They abuse and harass them and strict legal action may be taken against the accused persons. As the statements and MLRs revealed commission of offences punishable under Sections 148, 149, 323 and 506 of the Indian Penal Code, 1860 (for short 'the IPC'), FIR No.275 dated 08.07.2016 (Annexure P-3) was registered at Police Station Old Faridabad against the petitioners.

It may be added here that on 06.07.2016 Devraj also submitted written complaint to the SHO, Police Station Old Faridabad in which he alleged that on 24.06.2016 Electricity Department conducted raid on the house of Chhajjan Kumar situated opposite to his house. After the said raid Chhajjan Kumar and his family members abused them in presence of the police official and officials of the Electricity Department and thereafter they started abusing them on regular basis. On 06.07.2016 they dumped a huge pile of brickbats in 2 of 14 front of their house and on their protest wife of Chhajjan Kumar, his sons, daughter-in-law, his maid and her sons along with other boys belonging to their family and also some outsiders started beating them with Lathis and sticks and pelted stones on them and their house which caused heavy loss to them. They also tempered with the electricity pole in front of their house so that when his son goes to switch on light of the electricity pole he may get electrocuted. As the statement and MLRs revealed commission of offences punishable under Section 147, 149, 323, 427 and 506 of the IPC, FIR No.278 dated 08.07.2016 (Annexure P-4) was registered at Police Station Old Faridabad.

The present petitioners filed application under Section 438 of the Cr.P.C. for grant of anticipatory bail (Annexure P-5). In the application which was duly supported by affidavit of Devraj, the petitioners pleaded that the applicants No.1 and 2 (Durgesh and Rajjo) are household women who were never involved in any kind of litigation and any case. During hearing of the bail application, police filed report dated 25.07.2016 (Annexure P-7) in which it was mentioned that FIR No.691 dated 26.11.2014 was registered under Sections 323, 427, 452, 455, 506 and 34 of the IPC, Police Station Central Faridabad against Devraj and his wife Durgesh and DD Report No.20 dated 13.03.2015 was registered under Sections 107/151, 107/150 of the Cr.P.C., in Police Station Bhupani against Vinod @ Guddu and his wife Raj Kumari @ Rajjo. The applicants/petitioners were granted interim anticipatory bail vide order dated 25.07.2016 (Annexure P-8) which was made absolute vide order dated 01.08.2016 (Annexure P-9). Respondent No.2-Deepak filed application (Annexure P-1) under 3 of 14 Section 340 of the Cr.P.C. for taking action against the petitioners under Sections 193, 199 and 200 of the IPC. Vide impugned order dated 01.08.2016 (Annexure P-2) learned Additional Sessions Judge, Faridabad directed SHO, Police Station Old Faridabad to take action against the accused persons as per law. FIR No.523 dated 09.08.2016 was accordingly registered under Sections 193, 199 and 200 of the IPC at Police Station Central, Faridabad against the petitioners.

Feeling aggrieved the petitioners have filed the present quashing petition.

I have heard learned Counsel for the petitioners, learned State Counsel as well as learned Counsel for respondent No.2 and perused the record.

Learned Counsel for the petitioners has argued that respondent No.2 filed application under Section 340 of the Cr.P.C to wreck vengeance and out of personal vendetta which was not maintainable. The learned Additional Sessions Judge sent the application under Section 340 of the Cr.P.C. to the SHO, Police Station Old Faridabad for initiating proceedings against the petitioners without any power to mark inquiry to the police. In view of bar under Section 195 of the Cr.P.C. cognizance could be taken only on complaint of the Court. Section 340 of the Cr.P.C. mandated making of preliminary inquiry by the Court and only if the Court was of the opinion that it was expedient in the interest of justice to do so, a complaint could be filed. The impugned order is patently illegal and has been passed in total disregard of the procedure prescribed under Sections 195 and 340 of the Cr.P.C. Therefore, the application, impugned order and FIR in 4 of 14 question may be quashed. In support of his arguments learned Counsel for the petitioners has placed reliance on the observations in Neeraj Sharma Vs. NCT of Delhi & others (Delhi High Court) : 2009(5) RCR (Criminal) 394 ; Jagdish Vs. Ashok Kumar Gureja (Madhya Pradesh High Court) : 2008(1) RCR (Criminal) 765 ; B.K. Gupta Vs. Damodar H. Bajaj & others (Supreme Court) : 2010(3) RCR (Criminal) 886 ; Jagjit Kaur Vs. Harjeet Singh (Lt. Col.) (Delhi High Court) : 2000(1) RCR (Criminal) 747 ; BSES Rajdhani Power Ltd. Vs. Shiv Lal (Delhi High Court) : 2009(5) RCR (Criminal) 398; K.J. Wadhan and others Vs. Dilar Singh (Punjab and Haryana High Court) : 2005(4) RCR (Criminal) 999; Court on its own motion Vs. Liaqat (Punjab and Haryana High Court) : 1990(3) RCR (Criminal) 444 and Hazara Singh Vs. Rattan Singh (Punjab and Haryana High Court) : 1998(4) RCR (Criminal) 518 .

On the other hand, learned State Counsel and learned Counsel for respondent No.2 have argued that the police has power to register FIR and to investigate cognizable offences committed in or in relation to proceedings of the Court and power of the police is not circumscribed by Section 195 of the Cr.P.C. which merely bars taking cognizance except on complaint of the concerned Court. The concerned Court could also file complaint on the basis of FIR registered and materials collected during investigation by the police. The impugned order does not suffer from any illegality. Therefore, the petition may be dismissed. In support of their arguments, learned State Counsel and learned Counsel for respondent No.2 have placed reliance on the observations of Hon'ble Supreme Court in State of Punjab Vs. Raj 5 of 14 Singh : 1998(1) RCR (Criminal) 576.

In the present case, respondent No.2 filed application under Section 340 of the Cr.P.C. for taking action against the petitioner for commission of offences punishable under Sections 193, 199 and 200 of the IPC which read as under:-

"Section 193 : Punishment for false evidence.- Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Explanation 1. A trial before a Court-martial is a judicial proceeding.

Explanation 2. An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Section 199 : False statement made in declaration which is by law receivable as evidence.-

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Section 200 : Using as true such declaration knowing it to be false.-

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation - A declaration which is inadmissible merely upon the ground of some informality, is a 6 of 14 declaration within the meaning of sections 199 and 200."

It may be observed here that the offences punishable under Sections 193, 199 and 200 of the IPC are shown in the schedule to the Cr.P.C. to be non-cognizable.

Section 195 (i)(b) of the Cr.P.C. bars the Court from taking cognizance of the offences punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228 alleged to have been committed in or in relation to any proceedings in any Court except on complaint in writing of that Court or its authorised officer or higher Court to which such Court is sub-ordinate and the same reads as under:-

"195(i)(b) No Court shall take cognizance -

(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in

writing in this behalf, or of some other Court to which that Court is subordinate"

Section 340 of the Cr.P.C., which prescribes the procedure as to how a complaint may be preferred under Section 195 of the Cr.P.C., reads as under:-

"340. Procedure in cases mentioned in section 195.

7 of 14 (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause

(b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-

section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

[(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.] (4) In this section, "Court" has the same meaning as in section 195."

So far as initiation of proceedings for perjury is concerned the law is now well settled through a catena of the judgments of Hon'ble Supreme Court and may be summarised as under:-

1. Giving of false evidence and filing false affidavits is an 8 of 14 evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. (See Chajoo Ram v. Radhey Shyam and another, reported in AIR 1971 Supreme Court 1367).

2. If the court is to notice every falsehood that is sworn to by parties in courts there would be very little time for courts for any serious work other than directing prosecution for perjury. Again, the edge of such weapon would become blunted by indiscriminate use. (See Thomman Vs. IInd Additional Sessions Judge, Ernakulam and others, 1994 Cri. L.J. 48).

3. Mere acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. (See Chandrapal Singh and others v. Maharaj Singh and another, reported in 1982(2) RCR(Rent) 425 : AIR 1982 Supreme Court 1238).

4. Every incorrect or false statement does not make it incumbent on the Court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. (See M.S. Ahlawat Vs. State of Haryana and others : 2000 (1) SCC 278).

5. The gravity of the false statement, the circumstances under which such statement is made, the object of making such statement and its tendency to impede and impair the normal flow of the course of justice are matters for consideration when the court decides on the 9 of 14 propriety of instituting a complaint for perjury. (See Thomman Vs. IInd Additional Sessions Judge, Ernakulam and others, 1994 Cri.

L.J. 48).

6. Prosecution should be ordered when it is considered expedient in the interests of justice to punish delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial and there must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge. (See Chajoo Ram v. Radhey Shyam and another, reported in AIR 1971 Supreme Court 1367).

7. Prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable. It is only in glaring cases of deliberate falsehood where conviction is highly likely, that the Court should direct prosecution. (See Chajoo Ram v. Radhey Shyam and another, reported in AIR 1971 Supreme Court

1367 and Santokh Singh Vs. Izhar Hussain and another : AIR 1973 Supreme Court 2190).

8. The power given by Section 340 of the Cr.P.C. Should be used with utmost care and after due consideration. Such a prosecution for perjury should be taken only if it is expedient in the interest of justice. (See K.T.M.S. Mohd. and another Vs. Union of India : AIR 1992 Supreme Court 1831).

9. The Court must order prosecution in the larger interest of the administration of justice and not to gratify feelings of personal 10 of 14 revenge or vindictiveness or to serve the ends of a private party. (See Santokh Singh Vs. Izhar Hussain and another : AIR 1973 Supreme Court 2190).

In the present case, the petitioners filed application under Section 438 of the Cr.P.C. for grant of anticipatory bail (Annexure P-5). In the application which was duly supported by affidavit of Devraj, the petitioners pleaded that the applicants No.1 and 2 (Durgesh and Rajjo) are household women who were never involved in any kind of litigation and any case. During hearing of the bail application, police filed report dated 25.07.2016 (Annexure P-7) in which it was mentioned that FIR No.691 dated 26.11.2014 was registered under Sections 323, 427, 452, 455, 506 and 34 of the IPC in Police Station Central Faridabad against Devraj and his wife Durgesh and DD Report No.20 dated 13.03.2015 was registered under Sections 107/151, 107/150 of the Cr.P.C., in Police Station Bhupani against Vinod @ Guddu and his wife Raj Kumari which showed that the averments in the application and the affidavit were false in this regard.

Respondent No.2 filed application under Section 340 of the Cr.P.C. for initiating proceedings against the petitioners for commission of offences punishable under Section 193, 199 and 200 of the IPC in or in relation to the Court proceedings. On filing of the application under Section 340 of the Cr.P.C., learned Additional Sessions Judge did not apply mind to the facts of the case and form any opinion as to whether it was expedient in the interest of justice to make any enquiry under Section 340 of the Cr.P.C. or not, did not conduct any preliminary enquiry, record any finding as to prima facie 11 of 14 commission of the alleged offences and order making of complaint thereof.

A perusal of the relevant record shows that there was in fact inaccuracy of statement in making of the averments in the application and the affidavit which appears to be immaterial and prime case of deliberate falsehood on matter of substance was not made out. In view of the object and context of making the said averments and also the fact that the said averments did not in any manner substantially concern the merits of the case and did not have tendency to impede and impair the normal flow of the course of justice by prompting the Court to grant anticipatory bail on the basis thereof, initiation of any proceedings for filing of complaint for perjury was not expedient and warranted in the case in the interest of justice.

In State of Punjab Vs. Raj Singh : 1998(1) RCR (Criminal) 576 (relied upon by learned State Counsel and learned Counsel for respondent No.2) Hon'ble Supreme Court observed as under:-

".....From a plain reading of Section 195 Criminal Procedure Code, 1973 it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Criminal Procedure Code, 1973; and it

has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognisable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Criminal Procedure

12 of 14 Code, 1973 It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of section 195(1)(b) Criminal Procedure Code, 1973 but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filled by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 Criminal Procedure Code, 1973....."

There is no dispute with the proposition of law laid down in State of Punjab Vs. Raj Singh : 1998(1) RCR (Criminal) 576 relied upon by the learned Counsel for the respondents that Police can register FIR and investigate in respect of cognizable offences committed or in relation to proceedings in Court but in the present case, offences punishable under Sections 193, 199 and 200 are non-cognizable. In view of Section 155 of the Cr.P.C. the police could not register FIR and investigate non-cognizable case without the order of the Magistrate having power to try such case or commit the case for trial.

Consequently impugned order dated 01.08.2016 directing the SHO, Police Station Old Faridabad to take action against the petitioners as per law not being in conformity with law as referred above suffers from material illegality and the application filed under Section 340 of the Cr.P.C., the impugned order and FIR registered on the basis of thereof are liable to be quashed to prevent abuse of process and also for securing the ends of justice.

In view of the above discussion, the petition is allowed and 13 of 14 the application filed under Section 340 of the Cr.P.C., impugned order dated 01.08.2016 and FIR No.523 dated 09.08.2016 registered under Sections 193, 199 and 200 of the IPC at Police Station Central, Faridabad against the petitioners on the basis thereof are quashed.

04.12.2019
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

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