
(2018) 03 MP CK 0081
In the Madhya Pradesh High Court
Case No : MCRC OF 21274 OF 2016

Abhayjit Singh Parihar

APPELLANT

Vs

Mausam Pasi

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(1), 155(2), 156(3), 197, 202, 482
Indian Penal Code, 1860 — Section 294, 325, 506
Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3, 4, 10
Cantonment Act, 2006 — Section 247, 248

Citation : (2018) 03 MP CK 0081

Hon'ble Judges : SUSHIL KUMAR PALO, J

Bench : Single Bench

Advocate : Anil Khare, J.S. Hora, Pradeep Gupta

Final Decision : Allowed

Judgement

Â This petition under Section 482 of the Cr.P.C. has been filed to invoke the extraordinary jurisdiction of this Court and to quash the proceeding of ST

No.156/2016, pending before the Court of Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Jabalpur.

2. Filtering the unnecessary details, the facts requisite for deciding the case are that, the complainant/respondent No.1 Mausam Pasi has filed criminal

complaint case against theÂ petitioner No.1 " A.S. Parihar who is the sanitary inspector and the petitioner No.2 " D.R. Singh who is health

inspector in Cantonment Board, Jabalpur for offences punishable under Sections 294, 325, 506 read with Section 34 of the IPC and Sections 3, 4 and

10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.Â Learned JMFC vide order dated 23.07.2014 took cognizance of

the offences and registered the criminal case. After the committal of the case it is pending before the Court of Special Judge.

3. In the complaint it is alleged that on 11.02.2014 at about 09:30 p.m. door of complainant's house was knocked. When the complainant opened the

door, he found that four persons Anurag Acharya, D.R. Singh (petitioner), Abhijeet Parihar (petitioner), Naib Subedar Raajveer, QRT, GRC

entered into his house forcibly and inflicted injuries on him by kicks and fists. It is also contended that The shop owned by the complainant was

called to be vacated and because of this, they threw the articles kept in the shop. The complainant allegedly suffered loss of Rs.2 Lacs.

4. On behalf of the petitioners, the taking cognizance of offences by learned JMFC, has been challenged on the ground that, much prior to lodging of

the complaint case, the Cantonment Board was trying to remove the encroachment made by the complainant. On 12.02.2013, notice was sent to

the complainant for vacating the encroachment. Annexure A-3 is letter issued by CEO, Jabalpur to the complainant for vacating the premises.

Subsequently, another notice was issued to the complainant under Section 248 of the Cantonment Act, 2006 to demolish the encroachment within

thirty days from the date of receipt of the said notice. A letter dated 12.02.2013, was issued to General Manager, Milk Federation Cooperative

Society, Jabalpur by the Chief Executive Officer, Cantonment Jabalpur stating that milk parlour is being run unauthorisedly by complainant-

Mausam. Letter dated 10.03.2013 shows that CEO intimated to the complainant Mausam Babariya to remove the milk booth. In this letter, milk

booth allotted to the petitioner was cancelled. On 15.03.2013, another notice was issued to the respondent No.1.

5. Complaint by the respondent No.1 made to police on 06.02.2014 was not registered. Therefore, the respondent No.1 allegedly written letter dated

13.02.2014 to SP, Jabalpur. Investigation was made and report dated 26.02.2014 was submitted to the SP wherein the police has stated that the

petitioners D.R. Singh Health Superintendent, Cantonment Board and Anurag Acharya - Sub-Engineer, Cantonment Board along with

Abhayjeet Singh Parihar Health Inspector and QTR Incharge Subedar Haneef Khan had gone to remove the encroachment under the encroachment

removal drive.

6. On 12.02.2014, along with the Sanchi Corner of the complainant, nine other encroachments were removed. The complainant was annoyed by the action of the petitioners and therefore, filed the criminal complaint to wreak vengeance.

7. It is also claimed that the complainant/ respondent No.1 filed civil suit and prayed temporary injunction. The said prayer was rejected by learned 5th Civil Judge-II vide order dated 02.04.2013. It is also stated that the Cantonment Board filed an application on 20.09.2013, against the respondent No.1 under Section 247 of the Cantonment Act, 2006 before JMFC, Jabalpur. As the respondent No.1 despite several notices did not remove the encroachment, the Cantonment Board again issued a notice dated 03.02.2014 and asked the complainant to remove the encroachment. Thereafter vide order dated 10.02.2014, the CEO issued the order authorising the petitioners remove the encroachment.

8. The Cantonment Board also sent information to the SP to provide adequate police force on 11.02.2014 with regard to removal of encroachment and to cooperate with the encroachment removal team. After removal of the encroachment, the respondent No.1 on the next day i.e. 13.02.2014 submitted a complaint to the SP Jabalpur against the petitioners. Thereafter, he filed Criminal Complaint Case before JMFC on 19.03.2014, in which learned JMFC after recording evidence, registered the case.

9. It is contended that if the petitioners who are public servant prosecuted in such a manner for performing their duties, no officer will remove the encroachment. It is also claimed that the petitioners are public servant, therefore, they are protected under Section 197 of the Cr.P.C and without sanction no proceeding can be initiated against them for they were discharging their official duty of removing encroachment. It is also contended that procedure was duly followed by them for removal of encroachment and notices were sent by them to the complainant. The respondent No.1 filed the criminal complaint case only to wreak vengeance.

10. Per contra, learned counsel for the respondent No.1 has vehemently opposed the contentions and submitted that the land allotted to the petitioner- Mousam by Milk Federation to establish the milk booth. It is also contended that the Cantonment Board authorised the Sanchi Milk Federation to allot the land and the same has been allotted to the petitioner. Therefore,

removal of the petitioner is illegal and action of the petitioners are criminal. It is claimed that the respondent No.1 has rightly filed the criminal complaint case for offences committed by the petitioners.

11. On perusal of the record, prima facie it is apparent that there are several litigations prior to filing of the criminal complaint case. Earlier, the respondent No.1 filed the civil suit in which he could not get stay order in his favour. In the order dated 02.04.2013, passed in Civil Suit by learned Civil Judge-II it was held that no prima facie case was made out in favour of the respondent No.1 to grant injunction. The documents show that a prosecution was also launched against the respondent No.1 under Section 247 of the Cantonment Act, 2006. Annexure A-8 is the document which indicates that the petitioners D.R. Singh and A.S. Parihar were authorised by the Board to enter into the premises to remove the constructions/erections. Police Station Cantt. was also informed vide Annexure A-9 dated 11.02.2014 prior to removal of the encroachment.

Report dated 26.02.2014 submitted to the SP also supports the case of the petitioners. It would be appropriate to say that office of Cantonment Board wrote a letter to the Milk Federation on 12.02.2013 and Milk Booth was ordered to be removed. The intimation was sent to the respondent No.1/complainant on 10.05.2013.

12. A plain reading of the complaint dated 19.03.2014 shows that the accused persons came at 9:30 p.m. on 11.02.2014 and subsequently they came on 14.02.2014 along with the removal staff and JCB machine to remove the milk (booth) corner run by the complainant. The milk booth was taken away after scattering the articles kept in the shop.

13. Learned counsel for the respondent No.1 has placed reliance on the decision in the case of Amit Kapoor v. Ramesh Chander and Another, (2012) 9 SCC 460 which is with regard to quashment of criminal proceeding when civil proceeding is pending. It would be appropriate to mention here that the civil suit filed by the plaintiff/respondent No.1 in which application for injunction was dismissed and criminal complaint case has been filed by him and not by the petitioners.

14. He has also placed reliance on the decision in the case of Suresh Chand Jain v. State of MP and Another, 2001 CRIMINAL 168 which deals with the power of Magistrate to order investigation of cognizable offences in

exercise of power under Section 156 (3) of the Cr.P.C. and Section 202

of the Cr.P.C. Reliance has also been placed on the decision in the case of State of Bihar and another v. P.P. Sharma and Another, AIR 1991 SC

1260 which is with regard to mere allegations of mala fide against informant and investigating officer which cannot be basis of quashing the

proceeding.

15. The respondent No.1 has also placed reliance on the decision in the case of M.N. Ojha and Others v. Alok Kumar Shrivastava and Another,

(2009) 9 SCC 682 and in the case of Taramani Parakh v. State of MP and Others, (2015) 11 SCC 260 wherein it has been held by the

Supreme Court that quashing of proceeding is not appropriate at the preliminary stage where cruelty has been done to the complainant regarding

demand of dowry. This is a case of harassment caused to the complainant by her in-laws. Therefore, the ratio of this case is not applicable to the

present case.

16. All these citations seem to be on different footing and not applicable to the factual matrix of the present case. Hence, these citations cannot be

adhered to.

17. It would be appropriate to hold that the petitioners are public officers, have no enmity whatsoever against the respondent No.1/ complainant

except that they had to remove the encroachment. The respondent No.1/ complainant has filed criminal complaint case after removal of

encroachment. The criminal proceeding filed by the complainant is manifestly launched with malice with ulterior motive to wreak vengeance against

the petitioners. The complaint also seems to be absurd and highly improbable on the basis of which no prudent man shall reach to the conclusion that

there is sufficient ground to proceed against the petitioners.

18. In the case of State of Haryana v. Bhajan Lal, reported as (1992) Suppl. 1 SCC 335, Hon'ble the Apex Court has made it clear

that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae however,

to give an exhaustive list to 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 FIR 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 FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, an 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 malafide 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. In view of the preceding analysis and in view of the law laid down by Hon'ble the Supreme Court, in the present case the proceeding seems to be

maliciously instituted with an ulterior motive for wreaking vengeance against the petitioners and with a view to spite him due to private and personal

grudge, this petition is allowed. Complaint filed by the respondent No.1 as well as order dated 23.07.2014 passed by learned JMFC, Jabalpur are

quashed.