
(1997) 08 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 20037-M of 1996

Amarjit Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 26-08-1997

Acts Referred:

Citation : (1997) 4 RCR(Criminal) 636

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

Advocate : Vikram Chaudhary, A.S. Kalra, J.S. Brar, Ranjan Lakhanpal,
Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Amarjit Singh, Proprietor of Bharat Hotel and Restaurant, Opposite Railway Station, Railway Link Road, Amritsar, has filed the present petition under Section 482 of Criminal Procedure Code for registration of a case against respondents No. 4 and 5 and for handing over the investigation to the CBI. It was further prayed that adequate compensation be given to the petitioner for his illegal detention and torture and Rs. 2.5 lacs be got refunded to him.

2. According to the petitioner, he belongs to a respectable family. His father offered his services to the nation during the Chinese war in the year 1962 and his father also received a letter of thanks from the President of India vide letter dated 16.11.1962. The petitioner is doing currency and hotel business for the last 16 years at Amritsar and had been issued a valid licence to do the same as per law. Respondent No. 4 at the time of the filing of the petition was posted at Amritsar as Inspector, Incharge Anti Smuggling Staff. Although he was posted to check the smuggling in the area, but he had adopted a novel method to harass a common man and extort money from them in order to fill his own pocket. The petitioner and his staff members were picked up by the Police party led by respondent No. 4 on 10.3.1995. They were brutally tortured for one week. A message was then sent to the family members of the petitioner that in case they want to save the life of the petitioner, they should part with heavy amount of Rs.

2.5 lacs. It was also represented to the family of the petitioner that the petitioner and the car which was taken on 10.3.1995 would be released on payment of Rs. 2.5 lacs. Gurcharan Singh, fatherinlaw of the petitioner was called in the Police Station by respondent No. 4 to pay the amount in case he want that his soninlaw be released. Gurcharan Singh was left with no other alternative. He collected the amount from his close relations and paid the same to respondent No. 4 who accordingly released the petitioner along with his staff members and the car. After his release, the petitioner who is also the president of Market Union, made it public that a sum of Rs. 2.5 lacs were taken by respondent No. 4 for his release. Within a few days, the matter was known to every body. When respondent No. 4 came to know that the petitioner was telling about Rs. 2.5 lacs to every body, he called the petitioner to his office and gave him a receipt issued by respondent No. 7, wherein it was stated that Rs. 2.5 lacs had been paid as donation to Police DAV Public School by Gurcharan Singh, fatherinlaw of the petitioner. This receipt has been allegedly issued on 16.3.1996. The petitioner was warned against telling anybody about Rs. 2.5 lacs and his illegal detention. According to the petitioner no criminal case was registered against him. However, he was threatened that his life would be made miserable for telling people about Rs. 2.5 lacs and about his illegal detention and torture. After some days, constable named Kanwaljit Singh, respondent No. 5 who was posted at the office of the petitioner used to stop every customer who used to enter into the petitioner's shop and that respondent No. 5 used to enquire about the antecedents of customer. Left with no alternative with the petitioner, he filed a complaint dated 14.9.1996 to the Director General of Police, Punjab, Inspector General of Police, Border Range, Amritsar and SSP, Amritsar reporting the entire matter. The matter was investigated by S.P., Headquarter. After the said enquiry was completed, the DSP, Amritsar started summoning the petitioner every day. The petitioner was called in the office of DSP every morning, and he was allowed to return to his place of work in the evening. Another enquiry was pending against the petitioner. This continued for about 10 days. Thereafter, the petitioner left his house and business in Amritsar. Inspite of the repeated complaints made by the petitioner, no case was registered against respondent No. 4 and 5. The money which was paid to respondent No. 4 has not been returned to the petitioner or to Gurcharan Singh. The act on the part of respondent No. 4 constitutes a cognizable offence and it was the duty of the police to register a criminal case against respondent No. 4. The police has failed to discharge its statutory duty; hence the case should be got registered against the guilty persons and the investigation be handed over to the CBI.

3. Notice of this petition was given to the respondents. Three sets of written statement have come on record. One filed by respondents No. 1, 2, 3 and 6 under the signatures of Shri P.S. Gill, SSP, Amritsar. As per this written statement, the stand of these respondents is that there was a complaint against the petitioner which was entered at Sr. No. 3695 AP in in the complaint register maintained by DSP/Rural, Amritsar. That complaint relates to AntiNational

activities and smuggling against the petitioner. That complaint was entrusted to respondent No. 4 for investigation, however, that complaint was still pending with him. According to these respondents S. Gurcharan Singh, in fact, had donated Rs. 2.5 lacs in the office of DAV Public School, Police Lines, Amritsar and the Principal of Police DAV Public School had issued a receipt under his signatures in favour of Gurcharan Singh. The complaint dated 14.9.1996 which was received by the answering respondent was enquired into and it was found to be false. There was a complaint against the petitioner being a licence holder that he was indulging into antinational activities and the police would keep a watch upon him on that score.

4. In the written statement filed by respondents No. 4 and 5 it has been stated that the petitioner was never called by respondent No. 4. Respondent No. 4 had no concern or connection with the alleged amount as the same was given by Gurcharan Singh as donation to DAV Public School against a valid receipt and respondent No. 4 did not receive this amount for his own benefit. According to this respondent No. 4, the hotel of the petitioner was, in fact, an adda of smugglers and no customer had been visiting the hotel in order to get food. This hotel is invariably used and visited by the smugglers.

5. Respondent No. 7 filed a separate written statement and according to the stand taken up by this respondent this institution was established on 7.1.1991 for the wards of police personnel of Amritsar border range. It was specifically established for the wards of those police personnel who had sacrificed their lives in the war against terrorism. The school charges low fees and imparts high quality education at subsidised costs. The school was entrusted to the DAV College Managing Committee, New Delhi which is an education organization founded in 1985 and based on the ideology of modern educational. This respondent admits that it had issued the receipt to the persons concerned who donated the money amounting to Rs. 2.5 lacs on 16.3.1995. Even prior to 16.3.1995 this institution had received many voluntary donations from various people starting from 25.7.94 to 16.3.95. In short the stand taken up by this respondent is that S. Gurcharan Singh had voluntarily donated Rs. 2.50 lacs and it had nothing to do with the rest of the allegations of the petitioner.

6. I have heard Sh. Atul Lakhanpal, Advocate, on behalf of the petitioner, Mr. J.S. Brar, DAG, Punjab on behalf of respondents No. 1, 2, 3 and 6, Mr. A.S. Kalra, on behalf of respondent No. 4 and 5 and Mr. V.K. Chaudhary, Advocate, who gave appearance on behalf of respondent No. 7.

7. The prayer made by the petitioner is manifold. In short the allegation of the petitioner is that he was tortured and was picked up alongwith his staff members by respondent No. 4 and under threat he had to part with a sum of Rs. 2.5 lacs through his fatherinlaw Gurcharan Singh. The stand on the contrary is that Gurcharan Singh had parted with the money of his own and that the petitioner had been enjoying a bad reputation. He had been misutilising his premises as a notorious place for the protection of those persons who indulged in antinational

activities. It is also the stand of respondents No. 1 to 6 that the petitioner does not enjoy good reputation.

8. I do not want to comment on the merits, whether parting of the amount of Rs. 2.5 lacs by the petitioner or by his fatherinlaw was a voluntary act or a device coined by respondent Nos. 1 to 6 jointly or severally to extract the money for the benefit of the institution which is being run by the Police Department as is evident from the name of respondent No. 7 i.e. "Police DAV Public School, Police Lines, Amritsar". Prima facie it has not been established by the respondents that the petitioner or his fatherinlaw had any cause or action to part with a huge amount of Rs. 2.5 lacs to respondent No. 7. It has not been shown to me in documentary evidence, that any ward of the petitioner or Gurcharan Singh was studying in respondent No. 7 school, or in any way, the petitioner or his fatherinlaw was connected with that institution; and that what are the motive circumstances which had compelled the petitioner or his fatherinlaw to give Rs. 2.5 lacs by way of donation. If the money has been forcibly taken either from the petitioner or from his fatherinlaw, by respondent No. 4 at his own level or in connivance with his high ups, it is a serious matter which requires to be probed into. If any institution is short of funds in its coming up, this is not the proper approach on the part of the police to harass the persons and to collect the money. The petitioner may be notorious in the eyes of the police. The State might have a genuine apprehension about the alleged activities of the petitioner, but law has to take its own course. The State has vast powers at its resources to book the petitioner under the law. The respondents have not shown that any criminal case had been registered against the petitioner. It has not been shown by the respondents from the written statements that the management of respondent No. 7 has ever approached the petitioner or S. Gurcharan Singh to part some amount by way of donation. All these matters require scrutiny.

9. Resultantly, I direct the District and Sessions Judge, Amritsar to hold a judicial enquiry and look into the allegations of the petitioner as contained in the Criminal Misc. and the learned District and Sessions Judge, shall also enquire into the allegations whether the amount of Rs. 2.5 lacs had been voluntarily donated by S. Gurcharan Singh or by petitioner as alleged by respondent No. 1 to 6 or they have been forced by respondent No. 4 or anybody else to relieve from that amount. The learned District and Sessions Judge shall conclude his enquiry within 3 months from the receipt of the copy of this order after affording an opportunity to both the parties before adjudicating the controversy.

10. Though an effort was made by Mr. Lakhanpal to persuade me that the matter should be handed over to CBI yet in the opinion of this Court it will be premature for me to directly hand over the matter to the CBI or ordering for the registration of the case. Everything will depend upon the findings of the judicial officer. It was then submitted by Mr. Lakhanpal, that till the pendency of the enquiry before the judicial officer a cover up security should be provided to the petitioner. There are every chances that the petitioner may be put under pressure by the respondents

to withdraw from his allegations and the respondents might use third degree methods to detract the petitioner from prosecuting his allegations before learned District and Sessions Judge, Amritsar. The apprehension expressed by the Counsel for the petitioner is genuine. The petitioner has been pitted against the machinery of the police. The money admittedly had gone to the institution which is run by the police for the benefit of the children of the police, naturally respondents No. 2 to 6 would be interested to protect the interest of respondent No. 7. Directions are given to the SSP, Amritsar to provide adequate security of CRPF to the petitioner till judicial enquiry is concluded by the learned District and Sessions Judge, Amritsar.

11. The petition for the time being stands disposed of in the light of the above terms. Further action will be taken on the receipt of the report.