
(2004) 02 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 15563-M of 1993

Amrik Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482

Citation : (2004) 8 CriminalCC 649 : (2004) 2 RCR(Criminal) 368

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : G.S. Grewal, with Mr. Atul Sharma, for the Appellant; Rajeev Malhotra, DAG, Punjab, for the Respondent

Judgement

Nirmal Singh, J.—This is a petition u/s 482 Cr.P.C. for quashing the report submitted by the police u/s 173 Cr.P.C. and framing the charge by the Judicial Magistrate 1st Class, Bataia.

2. The relevant facts for the disposal of this petition are that the election of Gram Panchayat in village Masanian was held on 22.1.1993. The petitioner was declared as elected Sarpanch in the said election. The Presiding Officer of the election was Gurdial Singh and The Assistant Presiding Officer was the Nagar Mall. The whole allegations in the police report are that 200 votes in excess were recovered from the ballot box out of which 100 votes in excess were found in the ballot box of the petitioner and another 100 votes in excess were found in the ballot box of various panches. It is further the case of the petitioner that the excess votes were not counted. They were kept separate. Even after keeping those votes separate, the petitioner was declared as elected. Sarabjit Singh Khokar who was the Supervisory Officer Block Bataia lodged report with the police and during investigation it was found that no excess vote in the ballot box of Balwant Singh, the opposite candidate was found. After completion of the investigation, the charges against the petitioner was framed u/s 171 -E IPC. The petitioner challenged the report u/s 173 Cr.P.C. and the charge-sheet on the

following grounds:-

(a) That according to the allegation made in the police file, no offence u/s 171 - B has been committed. The relevant provision of Section 171 -B are reproduced as under: -

171 B Bribery (1) whoever:-

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this Section.

(2) A person who offers or agrees to give or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward."

The provisions of Section 171-E is also reproduced:

"171 E. Punishment for bribery:-

Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation:

"Treating" means that form of bribery where the gratification consists in food, drink, entertainment or provision."

According to the Indian Penal Code, an offence of bribery u/s 171 -B is committed if gratification is given for so called people to cast their votes in favour of some candidate or if gratification is given for preventing people from casting their votes in favour of some candidate. There is no such allegation that any gratification was given by any body to anybody for the purpose of procuring votes or for the purpose of preventing votes to be cast in the election of Gram Panchayat. In the absence of clear specific allegation of procuring or preventing votes by payment of some gratification, no offence u/s 171 -B or 171 -E is made

out.

(b) That it may be obvious that somebody did play foul as some votes which were not cast in this election, were recovered from the various boxes during election also in the village. It is also clear that those excess votes were not counted for the declaration of the result. Mere recovery of excess votes in the ballot boxes, does not come within the purview of Section 171-B or 171 -E IPC.

(c) That there is no evidence that any gratification was passed by or on behalf of the petitioner to anybody or for any objectional purposes.

(d) That mere recovery of some money running into thousands or above, from the house of Nagar Mal is not any way connected with the election held in the village.

(e) That there is no evidence to substantiate any ingredients to the offence alleged or charged against the petitioner."

3. On notice, reply was filed by the State pleading therein that the quashing will lead to implication of legal proceedings. It has further been pleaded that a clear cut offence u/s 171 -B is made out against the petitioner as Amrik Singh and the petitioner have paid a sum of Rs. 1,000/- to co-accused Nagar Mal and Gurdial Singh for polling the additional votes and on the statement of Nagar Mal some more votes were also recovered. It was further pleaded that the petitioner alongwith other co-accused were instrumental for casting of 100 votes in excess and he had bribed the presiding Officer and the Assistant Presiding Officer of the election who are co-accused. I have heard the learned counsel for the petitioners and perused the record.

4. The Apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, has laid down guide-lines where High Court can exercise inherent powers u/s 482 Cr.P.C. to prevent the abuse of process of law. However, this should be done sparingly and in rarest to rare cases. The guidelines are as under:

" 1) Where the allegation 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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the code except under an order of a Magistrate within the purview of S.1 55(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 F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the

code.

5) Where the allegation 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 mala fide and/or where the proceedings 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."

5. The case comes under clause(1) of the guidelines reproduced above. In the instant case, there is no legal evidence on record to show that the petitioner has accepted any illegal gratification from any person with the object of inducing him to exercise his electoral right. The only evidence against the petitioner is the evidence of co-accused Nagar Mal. The evidence of a co-accused is not admissible in law. The learned trial court has erroneously charge-sheeted the petitioner u/s 171-E IPC.

At the hearing, when it was pointed out to Mr. Rajiv Malhotra, learned DAG, Punjab how the case u/s 171 -C/171 -E IPC is made out against the petitioner, he was unable to explain.

From the evidence collected by the prosecution, there is not even iota of evidence that petitioner has accepted any gratification from any person. So continuing the proceeding against petitioner will tantamount to abuse of process of law.

For the reasons recorded above, this petition is accepted and report submitted by the police u/s 173 Cr.P.C. in FIR No.4 dated 22.1.1993 and order dated 29.9.1993 passed by learned Judicial Magistrate 1st Class, Batala are quashed.