
(2010) 11 SHI CK 0183
In the High Court Of Himachal Pradesh
Case No : CRMMO No. 144 of 2009

Dinesh Chand Sharma

APPELLANT

Vs

Deputy Commissioner Office Employees" Union and Others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 204, 319, 482
Penal Code, 1860 (IPC) — Section 500, 504

Citation : (2010) 11 SHI CK 0183

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Petitioner, by means of present petition, u/s 482 of the Code of Criminal Procedure, has sought reversal of order dated 20th May, 2009, passed by learned Additional Sessions Judge (Fast Track Court), Una, in two separate criminal revision petitions, filed by the Respondents in the Sessions Court, which were assigned to him (the said Additional Sessions Judge).

2. In one criminal revision petition, i.e. Criminal Revision No. 13 of 2007, Respondents challenged the order dated 4th August, 2007, passed on an application, u/s 319 of the Code of Criminal Procedure, by which they were ordered to be summoned as accused in a Criminal Complaint, u/s 500 and 504 of the Indian Penal Code. In the second Criminal Revision Petition No. 16 of 2008, the Respondents challenged the order, u/s 204 of the Code of Criminal Procedure, summoning them as accused in another Private Complaint, u/s 500 of the Indian Penal Code.

3. Factual matrix relevant for the disposal of the present petition may be noticed. Petitioner is a practicing Advocate at Una. On 29th April, 2000, he went to the Office of Deputy Commissioner, where he was allegedly attempted to be assaulted by the Deputy Commissioner and was actually assaulted by the Personal Security Officer of the Deputy Commissioner and the Personal Assistant of the Deputy Commissioner and was ultimately pushed out of Deputy

Commissioner's room. On the same day, an FIR was lodged against the Petitioner by a Peon of the Deputy Commissioner that he had been assaulted by the Petitioner, in the discharge of his duties and had also been voluntarily caused injuries.

4. On 6th May, 2000, present Petitioner filed a Private Complaint against the Deputy Commissioner, his Personal Security Officer, his Personal Assistant and his Peon (who got the case registered against the Petitioner), alleging that they had assaulted/attempted to assault him.

5. On 28th April, 2003 or say almost three years after the aforesaid occurrence, Petitioner filed another complaint, under Sections 504 and 500 of the Indian Penal Code, against the President of Employees' Union, Una and Ashok Kumar, President of the said Union, alleging that they had addressed a letter to the President of Bar Association, in the month of May, 2000, in which it was alleged that the Petitioner had assaulted a Peon of the Deputy Commissioner and, therefore, action be taken against him.

6. The matter remained pending in the Court of Judicial Magistrate for quite some time. Petitioner examined a witness on 10th December, 2004 and got proved one Resolution, passed by the Employees' Union. In that Resolution, there is a reference to assaulting of a Peon of Deputy Commissioner by the Petitioner and the President of the Union has been authorized to report the incident, both to the President of Bar Association as also the Deputy Commissioner. Petitioner then moved an application, u/s 319 of the Code of Criminal Procedure, on 17th June, 2005 or say more than five months after the proof of the aforesaid Resolution, for impleading of those persons, who were signatory to the Resolution, alleging that they had abetted the writing of defamatory letter by the President of their Union to the President of Bar Association, Una. That application was allowed by the Judicial Magistrate, vide order dated 4th August, 2007 and the Respondents were ordered to be impleaded as accused in the aforesaid complaint, under Sections 504 and 500 of the Indian Penal Code, which was instituted by the Petitioner on 28th April, 2003.

7. On 7th July, 2006, another complaint was filed by the Petitioner, alleging that by addressing a letter to the Deputy Commissioner, pursuant to the aforesaid Resolution, which is dated 1st May, 2000, all the Respondents, herein, committed offence of defamation, as in the said letter, addressed to the Deputy Commission, a false allegation had been made that the Petitioner had assaulted a Peon of the Deputy Commissioner and that this was done with an intention to defame him.

8. After the Petitioner adduced preliminary evidence, u/s 200 of the Code of Criminal Procedure, learned Judicial Magistrate passed order, on 15th November, 2007, u/s 204 of the Code of Criminal Procedure, for summoning the Respondents.

9. Respondents filed two separate Revision Petitions in the Sessions Court,

challenging the order dated 4th August, 2007, passed on the application, u/s 319 of the Code of Criminal Procedure, aforesaid, and the order dated 15th November, 2007, passed in the second complaint, u/s 500 of the Indian Penal Code.

10. Learned Additional Sessions Judge has disposed of both the revision petitions by a common order, i.e. the order which has been assailed in the present petition, u/s 482 of the Code of Criminal Procedure. Both the Revision Petitions were allowed and the Petitioner was held to have abused the process of Court and was, therefore, ordered to pay Rs. 10,000/-as costs. Learned Additional Sessions Judge has observed that by filing an application, u/s 319 of the Code of Criminal Procedure and at the same time filing a separate complaint, with respect to the same incident, with regard to which application, u/s 319 of the Code of Criminal Procedure, had been filed, the Petitioner had abused the process of Court.

11. I have heard the Petitioner, who appears in person, as also the learned Counsel for the Respondents and also gone through the record.

12. View taken by the learned Additional Sessions Judge that by filing an application, u/s 319 of the Code of Criminal Procedure and also a complaint, with respect to the same incident, is factually incorrect. Petitioner filed a complaint, under Sections 504 and 500 of the Indian Penal Code, complaining that by writing a letter to the President, Bar Association Una, the President of Employees' Union had committed the offence of defamation. Application, u/s 319 of the Code of Criminal Procedure, filed in the said complaint, was to the effect that the other Respondents, who were sought to be impleaded as co-accused, had abetted writing of the defamatory letter by the President of the Employees' Union to the President, Bar Association Una.

13. The second complaint was with respect to another letter, though having the same contents, which was addressed to the Deputy Commissioner. Petitioner, according to him, was unaware of the writing of the second letter to Deputy Commissioner, Una, when he filed the earlier complaint and that he came to know about the same only when he was leading preliminary evidence, u/s 200 of the Code of Criminal Procedure, in regard to that complaint. Therefore, the second complaint could not have been held to be with respect to the same act of alleged defamation, with respect to which complaint had already been instituted and an application, u/s 319 of the Code of Criminal Procedure, was also filed.

14. However, on the basis of evidence adduced in the second complaint, it cannot be said that offence of defamation has been committed. Letter was written to the Deputy Commissioner by the Employees' Union, after a Resolution was passed by the Executive Body of the Union, not with intent to defame the Petitioner, as assumed by him, but to bring it to the notice of the Deputy Commissioner, who was their employer, that one of their members had been assaulted in the discharge of his duties and that the employees needed protection. Deputy

Commissioner was already in the know of the incident that had been reported to him in the alleged defamatory letter. The letter remained with the Deputy Commissioner only. It was not meant to be published or circulated to others. Thus, it cannot be said that offence of defamation was committed by the Respondents, by addressing the alleged defamatory letter to Deputy Commissioner, Una.

15. In view of the above discussion, order of learned Additional Sessions Judge, summoning the Respondents in the complaint, instituted on 7th July, 2006, is quashed and the said complaint is dismissed.

16. As regard the order passed on application, u/s 319 of the Code of Criminal Procedure, summoning some additional persons as accused, in the initial complaint, under Sections 504 and 500 of the Indian Penal Code, Resolution, copy of which is available on record, shows that the intention was not to defame the Petitioner, but to bring to the notice of the President of Bar Association Una the alleged misconduct of the Petitioner. Therefore, the Respondents, who were ordered to be added as accused in the initial complaint, cannot be said to have abetted commission of offence of defamation. So, the order dated 4th August, 2007, passed on application, u/s 319 of the Code of Criminal Procedure, in the first complaint, is also quashed and set aside.

17. However, in view of the above stated position, order of learned Additional Sessions Judge (Fast Track Court), for payment of costs of Rs. 10,000/- by the Petitioner, is set aside.

Petition stands disposed of accordingly.