
(1994) 02 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4459-M of 1992

D.P.Goel

APPELLANT

Vs

Surinder Gupta

RESPONDENT

Date of Decision : 03-02-1994

Acts Referred:

Citation : (1994) 2 RCR(Criminal) 109

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : A.S. Syan, S.K. Ruppel, Rajiv Kataria, N.S. Bawa, G.S. Bawa,
Advocates for appearing Parties

Judgement

Harmohinder Kaur Sandhu, J.

1. Prem Kumar husband of Surinder Gupta respondent worked as a senior Clerk in the office of Executive Engineer, Reservoir Management Division, Bhakra Beas Management Board, Nangal Township and Shri D.P. Goel petitioner was his boss. Ram Chand, father of Prem Kumar had filed some complaints against the officers of Bhakra Beas Management Board for corruption. In order to dissuade Ram Chand from pursuing those complaints Prem Kumar was transferred from Chandigarh to Nangal and in order to further harass him the petitioner directed Shri Jagat Ram head clerk of his office to mark Shri Prem Kumar as absent from duty even though he attended the office. In spite of the fact that Prem Kumar was being marked as absent he continued attending his office and his father was also not dissuaded from pursuing the complaints filed by him which infuriated the petitioner. When Prem Kumar persisted that he should be marked present as he was attending the office regularly the petitioner abused him in the name of his mother and sister and defamed him in the presence of Jagat Ram and his other colleagues. He also threatened him with dire consequences and asked him to leave the office immediately. Jagat Ram, head clerk was told that in case Prem Kumar ever entered the office again he should be done to death. The respondent approached various executive authorities with written requests and also sent complaints to S.S.P. Ropar and to Director General of Police, Punjab, narrating

these facts but no action was taken. On these averments Smt. Surinder Gupta filed complaint against Shri D.P. Goel for offences under Section 166, 500, 506, 511 I.P.C. read with section 120B on behalf of Prem Kumar as he had lost balance of mind on account of harassment, mental agony, defamation and threat of murder. The complaint was presented in the Court of Sub Divisional Judicial Magistrate, Anandpur Sahib and the learned trial Court after recording evidence summoned the petitioner to face trial for the offences under Sections 116, 500 and 506 I.P.C.

2. Shri D.P. Goel, Executive Engineer, has filed the present petition under Section 482 Cr.P.C. for quashing the above referred complaint dated 3.10.1991 Annexure P1 and summoning order dated 26.3.1992 Annexure P/2 being abuse of the process of the Court. The petitioner alleged that whatever act was attributed to him in the complaint was alleged to have been done in the discharge of his duties so sanction under Section 197 Cr.P.C. was required before cognizance of the complaint could be taken. In the absence of sanction of the Punjab Government under Section 197 Cr.P.C. which was a condition precedent, the complaint was barred. The allegations made pertained to September, 1987 whereas the complaint was instituted on 3.10.1991. The maximum sentence for the offences for which he was summoned was two years. Thus, as per the provisions of Section 468 Cr.P.C. cognizance of the complaint was wholly barred as the same was filed beyond the maximum prescribed period of three years. No application was moved for condonation of delay. It was further urged that the complainant was not the person aggrieved under Section 199 Cr.P.C. If at all, it was Prem Kumar who was an aggrieved person competent to file the complaint. No permission was granted to the complainant to peruse the complaint and absence of such order showed nonapplication of judicial mind by the trial Court in passing the summoning order. No medical certificate was produced to show that Prem Kumar was suffering from any infirmity which could furnish a ground to the respondent to file the complaint on behalf of her husband. The complaint was filed on baseless allegations and was malafide. Prem Kumar was held guilty in a departmental enquiry for misconduct and indiscipline and was awarded punishment. He was pursuing his departmental proceedings and filed an appeal against the punishment and he never contended that he was suffering from any infirmity.

3. In the return filed by the respondent the allegations made in the petition were refuted and it was maintained that the trial Court after examining the preliminary evidence rightly summoned the petitioner to face trial for the various offences. No sanction was required for prosecution of the petitioner under Section 197 Cr.P.C. as he was neither functioning as an officer of Punjab Government nor performing duties of the Punjab State. He was on deputation with Bhakra Beas Management Board which was an autonomous body. Moreover, to abuse and threat an employee was not the official function of the petitioner and for prosecution for such an offence no sanction under Section 197 Cr.P.C. was required. Regarding limitation it was pleaded that the petitioner had issued

threat to the life of Prem Kumar and there was no limitation for trying such an offence. Moreover, question of limitation involved question of fact which could be gone into by the trial Court after recording evidence.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the petitioner urged that the alleged incident pertained to September, 1987 whereas the complaint was filed on 3.10.1991. The maximum sentence for the offences for which the petitioner was summoned was two years and the trial Court was not competent to take cognizance of the offences after the expiry of a period of three years. It was urged that the period of limitation for filing a complaint was three years if the offence was punishable with imprisonment for a term exceeding one year but not exceeding three years. The petitioner was summoned for offences under Sections 166, 500 and 506 I.P.C. The maximum punishment provided for the offence under Section 166 I.P.C. was simple imprisonment for one year or fine or both, for the offence under Section 500 I.P.C. simple imprisonment for two years or fine or both, for the offence under Section 506 I.P.C. when there was only criminal intimidation imprisonment for two years or fine or both and, thus, the complaint was barred by time and the Court was not to take its cognizance more so when there was no prayer for extension of time. This contention of the learned counsel is without merit because as per allegations in the complaint the petitioner threatened Prem Kumar with dire consequences. He threatened that he will put him to death and then directed Shri Jagat Ram Head constable to stab him if he ever entered his room again. The threat, thus, alleged to have been given was to cause death and in that case the sentence provided was seven years of fine or both and it could not be said that the period of limitation had expired and Court was not right in taking cognizance of the offence.

6. It was argued on behalf of the petitioner that the petitioner was working as an executive engineer in Bhakra Beas Management Board at the time of alleged occurrence and the said incident took place while in the discharge of his official duties, thus, sanction under Section 197 Cr.P.C. was required before proceeding against him. The learned counsel for the respondent, on the other hand, contended that the act of abusing and threatening Prem Kumar could not be considered as an act done by the petitioner in the discharge of his official duties and moreover, the petitioner was not working as a public servant who could be removed from his office only with the sanction of the State Government. He was on deputation with Bhakra Beas Management Board and he could be removed from there without the prior sanction of the State Government. In support of his contention he placed reliance on L.D. Kataria v. K.N. Kutty, 1972 Punjab Law Reporter 383. In this one member of Indian Administrative Service was holding office of Managing Director of a corporation at the pleasure of the Governor and the Governor had the power to remove him from office at any time in his absolute discretion. It was held that in these circumstances the Managing Director of the Corporation could not be considered to be a public servant of the

type envisaged by Section 197 Cr.P.C.

7. I have considered the respective contentions of the learned counsel for the parties and am of the view that in the instant case even if it is prima facie presumed that the act constituting offence was directly and reasonably connected with the official duty performed by the petitioner yet it is not made out that he was holding an office from which he was removable only after sanction was obtained from the State Government. The learned counsel for the petitioner failed to refer to any relevant provision showing that after he joined service of Bhakra Beas Management Board he was still not removable from his office save by or with the sanction of the State Government. The question what were his service conditions after he joined that deputation post will be gone into by the trial Court. The complaint is not liable to be quashed for want of sanction at this initial stage.

8. Lastly, it was urged that the complaint was not filed by the person who was actually aggrieved and it was filed on his behalf by his wife and there were no findings by the Court that Prem Kumar was actually suffering from some infirmity which disabled him from filing the complaint himself. This contention too is without any merit. There are averments in the complaint that Prem Kumar who was actually the aggrieved person had lost balance of his mind on account of harassment, mental agony, defamation and threats to his life by the petitioner and that is why the complaint was filed by his wife. The question whether Prem Kumar was actually unable to file the complaint due to mental sickness is also to be gone into after evidence is led. Taking the averments as made in the complaint on their face value, prima facie case was made out against the petitioner to stand trial for the various offences for which he was summoned.

9. In the result I find no merit in the petition and dismiss the same.