
(1974) 02 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal M.P. (Main) No. 26 of 1973

Harnam Singh

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 25-02-1974

Acts Referred:

Constitution of India, 1950 — Article 136, 227

Criminal Procedure Code, 1973 (CrPC) — Section 526, 528, 561A

Citation : (1974) 3 ILR HP 167

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : H.S. Thakur, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—In this petition u/s 526 read with Section 561-A of the Code of Criminal Procedure and Article 227 of the Constitution, Harnam Singh presently posted as Sub-Inspector of Police Kulu, has asked for the transfer of a certain inquiry pending against him before the Chief Judicial Magistrate, Kulu to some other competent authority under the law. The grievance of the Petitioner is, that Shri A.N. Bhoil the then Sessions Judge, Mandi and Kulu Sessions Division, during the course of his inspection of Sub-Jail of Kulu which he conducted on 22-1-1973, made certain adverse remarks against him and asked the S.D.M. Kulu to hold an enquiry against the Petitioner. Subsequently the High Court in exercise of its administrative powers, withdrew the enquiry from the S.D.M. Kulu and entrusted it to the learned Chief Judicial Magistrate, Kulu. It is contented by the Petitioner, that the learned Chief Judicial Magistrate, Kulu, is prejudiced against him in support of which he has given several instances in the petition. It is stated that Shri A.N. Bhoil had filed a complaint against one Hari Singh, A.S.I. Kulu and the learned Chief Judicial Magistrate issued non-bailable warrant against the said A.S.I. which was given to the Petitioner for compliance. The Petitioner could not serve the warrant upon the said Hari Singh and upon that

the learned Chief Judicial Magistrate was displeased with him. It is then stated that the learned Chief Judicial Magistrate had also made a complaint against the Petitioner that he was not quick in submitting challenges against some under-trials lodged in judicial lock-up. The Petitioner has also quoted an instance wherein, according to him, the learned Chief Judicial Magistrate became angry because he wanted some clerk of the office of the Chief Medicinal Officer, Kulu, to be prosecuted at the instance of one Dealer Singh with whom the learned Chief Judicial Magistrate had social relations. The Petitioner could not register a case against the said clerk and that infuriated the learned Chief Judicial Magistrate. Finally the Petitioner has contended that the learned Chief Judicial Magistrate is not holding a fair and impartial enquiry inasmuch as that he is not recording correctly the statements of witnesses, that the evidence is being recorded piecemeal and all the witnesses are not being examined on one and the same day, and that the learned Magistrate has also refused to postpone the enquiry at the request of the Petitioner. On these grounds, the Petitioner seeks interference by this Court under Article 227 read with Sections 526 and 561-A of the Code of Criminal Procedure for transfer of the enquiry from the learned Chief Judicial Magistrate to some other competent authority.

2. No return has been filed by the State. However, a detailed report has been submitted by the learned Chief Judicial Magistrate. It is revealed that Shri A.N. Bhoil, while he was inspecting the Sub-Jail at Kulu, was approached by certain under-trials, namely Rattan Chand, Ram Rattan and Tikam Ram. The latter complained that they were being brought from Jail lockup to the Police Station and Harnam Singh S.H.O. was intimidatating them to confess their guilt and was also beating them. For this, the learned Sessions Judge asked the S.D.M. Kulu to hold enquiry and report the matter to him. Subsequently the High Court thought it fit to entrust the enquiry to the Chief Judicial Magistrate, Kulu. The report of the Chief Judicial Magistrate further indicates that a non-bailable warrant was issued against Hari Singh ASI in the complaint case filed by Shri A. N. Bhoil and the said warrant was returned by the Petitioner unserved. However, it is denied that the learned Chief Judicial Magistrate expressed any anger because of that. While performing his judicial function, the learned Chief Judicial Magistrate no doubt raised some objection against Harnam Singh S.H.O. for not sending the challans of under-trials expeditiously after completing the investigations. As to the medical reimbursement bills the learned Chief Judicial Magistrate admitted that such bills were submitted at the office of the Chief Medical Officer, Kulu, but he was not aware if any objections were raised by any clerk. About Daler Singh he admitted that he had social relations with him but he denied that Daler Singh wanted to prosecute anybody at his instance. Similarly he never asked Harnam Singh S.H.O. to prosecute anybody in a false manner " at the instance of Daler Singh. It is correct, according to the learned Chief Judicial Magistrate, that Harnam Singh lodged a complaint against Rattan Chand and Ved Bratt Bhalla. One of the accused Rattan Chand compromised the case before him, while the complaint is pending against the other accused. As regards the allegations made

for not holding a fair and impartial inquiry, there is a denial in to by the learned Chief Judicial Magistrate. He has been recording the statements quite correctly according to the version of these witnesses. It was difficult to record the statements of all the witnesses on one and same day. The enquiry entrusted to him is purely administrative and no procedure is prescribed for the same. As such, according to the learned Chief Judicial Magistrate, Sections 526 or 528 of the Code of Criminal Procedure do not apply and he refused to transfer the enquiry from his Court to some other authority as asked for by the Petitioner.

3. It is true that the High Court has a power of superintendence over all Courts and tribunals subordinate to it under Article 227. But this power of superintendence is to be exercised sparingly and only in appropriate cases. The real purpose behind the power of superintendence is to keep the Court or the tribunal within the bounds of its authority. For this, firstly the Petitioner has to establish that the Chief Judicial Magistrate constitutes a tribunal amenable to the jurisdiction under Article 227, and secondly that the said tribunal has not acted within the limits of its authority. In my opinion, the Petitioner has failed on both these counts. The expression "tribunal" has been used in Article 136 and is well defined by the Supreme Court. In *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, it has been held that the basic and the fundamental feature which is common to both the Court and the tribunal is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State. The main test to be applied is whether the body or authority has been constituted by the State and has been clothed with the State's inherent judicial power to deal with disputes between parties and determine them on the merits fairly and objectively. The obvious test would be as to whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. It is prima facie correct that the Chief Judicial Magistrate is holding this enquiry in purely administrative capacity. A certain complaint of maltreatment by the Police has been made to the Sessions Judge. The enquiry has been entrusted to the Chief Judicial Magistrate on the administrative side. He is not exercising any judicial function, nor can it be stated that he has been transferred any judicial power or authority which is vested in the State in its sovereign right. Therefore, the test is not satisfied and the Chief Judicial Magistrate is not a tribunal. The High Court cannot exercise its power of superintendence under Article 227 in the present case.

4. Apart from that, the Petitioner has failed to point out any statute or rule which has been violated. All that has been stated with reference to fair and impartial enquiry has been denied by the Chief Judicial Magistrate. There is thus no basis for interference under Article 227 or u/s 561-A of the Code of Criminal Procedure. Section 526 essentially refers to an offence or to cases or appeals relating to the commission of an offence. The said Section is also inapplicable.

5. It as a result of this administrative enquiry, any action is taken against the Petitioner, he would have a remedy against that action. It is rather premature to conceive of any evil consequence which might be fall upon the Petitioner.

6. Whatever has been stated by the learned Chief Judicial Magistrate in reply to the petition must be accepted to be correct. As such no grounds are made out to give a finding that there is an apprehension, what to say a reasonable apprehension, in the mind of the Petitioner that he would not receive a fair and impartial enquiry from him.

7. The petition is, therefore, dismissed without making any orders as to costs.