
(1989) 09 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6057-M of 1988

Inder Dev Gaur.

APPELLANT

Vs

State of Haryana .

RESPONDENT

Date of Decision : 30-09-1989

Acts Referred:

Citation : (1989) 1 RCR(Criminal) 150

Hon'ble Judges : A.P.Chowdhri, J

Advocate : Sh. J. B. Taccoria, Sh. D.D. Gupta, Advocates for appearing Parties

Judgement

A.P. Chowdhri, J.

1. In this petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") Inder Dev Gaur seeks the quashing of FIR 228 dated 2.8.1987, Police Station Ambala Cantt under section 52 of the Indian Post Office Act, 1898.

2. Brief facts of the case are that the petitioner Inder Dev Gaur is a postman working in General Post Office, Ambala. He was assigned beat No. 14. On 10.7.1987, 132 postal articles including letters, book packets, postcards and inland cards etc. were entrusted to, him by the Delivery Assistant of the office of Post Master GPO Ambala for delivery to the addressees. Later in the day, one Itbari Lal, Office Fresh, Central Telegraph Office, Ambala Cantt. came to the office of Post Master, GPO at 10.20 a.m. and handed over one brown packet to the Post Master saying that while on his way to his office, someone handed over to him the said packet near the office of fire Brigade, telling that the packet contained postal articles and it was found lying on the road and he handed it over to the Post Master. The Post Master arranged to have the said postal articles delivered to the addressees and sent report to the Station House Officer on the basis of which the present case was registered on 2.8.1987. The case is still under investigation and challan has not been put in Court.

3. On 18.7.1987, the Senior Post Master served the petitioner with an order

placing the former under suspension with immediate effect as disciplinary proceedings were contemplated against him. The petitioner continues to be under suspension since then.

4. The case of the petitioner is that Sh. M.R. Sachdeva was posted as Senior Post Master, Incharge of General Post Office, Ambala Cantt in 1987. The petitioner as a postman serving in the said post office was an active member of the Bhartiya Postal Employees Union, Postman and Class IV, Branch Ambala Cantt, affiliated to the All India Postal Employees Union and in the year 1987 he was elected as Secretary of the said Union. In his capacity as Secretary of the Union, he wrote a letter on 20.6.1987 to Shri M. R. Sachdeva, Senior Post Master, complaining about certain acts of favouritism shown by the Deputy Post Master regarding his own son Surinder Kumar, postman at the expense of other and requesting the Senior Post Master to intervene in the matter and remove the grievances. A copy of the letter was forwarded to Mrs. Manjula Prashar, Director Postal Services, Haryana, at Ambala, with a request to set the matter right. Copy of the letter is Annexure P1. Endorsement made to Mrs. Manjula Prashar contained allegations against Sh. Munshi Ram Sachdeva, Senior Post Master, Ambala GPO besides the Deputy Post Master. It was said that they had insulted the workers and had misbehaved with them when they were sitting on dharna on 10.6. 1987 in a peaceful manner. It was also stated that ultimately leave of a postman for the said date was refused after withholding the same overnight. The point is that there were direct allegations made by the petitioner as Secretary of the Union against Mr. Sachdeva.

5. On 24.6.1987, the petitioner approached Mr. Sachdeva in order to fix a meeting with him but the latter refused to see the petitioner and conveyed to him that he would not like to see his face as he had made a complaint against him regarding 10.6.1987. He also conveyed a threat that he would teach the petitioner a lesson. The petitioner intimated this fact to the Circle Secretary of Bhartiya Postal Employees Union, Karnal through letter dated 26.6.1987 Annexure P2. The Circle Secretary was requested to bring the aforesaid incident to the notice of Post Master General and he was also requested to secure a meeting with the Senior Post Master Mr. Sachdeva, so that welfare of the postal staff could be looked after.

6. On 27.6.1987, Sh. M. R. Sachdeva is alleged to have arranged an assault on the petitioner through his orderly Sh. Jai Parkash, with the help of some outside gundas, numbering three at 2.30 p.m. The petitioner suffered injuries on chest and other parts of the body in the presence, of several postal employees. The petitioner lodged a written complaint with the Senior Superintendent of Police, Ambala City the same day. He also sent a copy of the complaint to the Circle Secretary of the Union at Karnal and Post Master, General Post Office, Ambala Cantt. Copy of the complaint is Annexure P3. On account of the said injuries, the petitioner could not attend his office and sent leave application on 29.6.1987 for two days, i.e. 29th and 30th of June 1987. Copy of, the application is Annexure

P5. The other members of the union. felt concerned and a meeting of Joint Council of the Postal Union was held on 7.7.1987 at 6 p.m. Copy of the notice for convening the meeting is Annexure P6. The meeting resolved that action be taken against Senior Post Master, Ambala, which allegedly engineered assault on the petitioner in league with other officials of the General Post Office. The Joint Council gave a call to go on strike from 14.7.1987 to. 16.7.1987. The news item to this fact was published in the daily Indian Express in its issue dated 10.7.1987. Copy of the same is Annexure P7.

7. With regard to July 10, 1987, the petitioner stated that he went to his office at 7.30 a.m. and put his initials in the Attendance Register at two places indicating the first and third shift as per usual practice but since he was having temperature he could not attend to his work and with the permission of his immediate Incharge Sh. Sahib Singh. Assistant Post Master, he proceeded on leave on medical grounds. He was told that he should report for, duty when declared fit. Before leaving, he asked the Assistant Post Master to allow him to score off his attendance. The Assistant Post Master. however, advised him to put a cross mark under the initials at both the places indicating his absence on leave, which he did and left for his house at 7.45 a.m. He remained on leave up to 13.7.1987 whereafter he submitted medical fitness certificate and resumed his duty from 14.7.1987.

8. On 18.7.1987 he was served with the order of suspension without being informed as to reason therefor. In the circumstances he wrote that he did not know the reason why he had been relieved and what was the accusation against him. Copy of the note made by him is Annexure P8/T.

9. On 22.7.1987, the Senior Post Master Sh. M. R. Sachdeva wrote a complaint which was sent to Station House Officer, P.S.Sadar, Ambala Cantt by registered A. D. It was on the basis of that complaint that the present case was registered.

10. Learned counsel for the petitioner took me through the various Annexures filed with the petition. No reply having been filed on behalf of the respondent, I take it that the facts alleged by the petitioner have not been controverted. The alleged incident of 10.7.1987 thus had a definite background starting from 10.6.1987. The details of various incidents which were evidently unpalatable to the senior post master were mentioned. The incidents referred to above, have definite basis in the form of documents to which reference has been made. It is not disputed that the petitioner was Secretary of the Trade Union and as such he had levelled allegations of misbehaviour and. insulting attitude of the Senior Post Master against the members of the Union sitting in dharna on 10.6.1987. He had not only made these allegations, he had sent a copy of the same to the Director Postal Services, Haryana, with a request that matter be brought to the notice of Post Master General as well. In addition to the above, the petitioner was assaulted allegedly by the orderly of the Senior Post Master with the aid of three outsiders. He suffered injuries at their hands for which he lodged a report with the police.

11. The third incident was a meeting of the Joint Council, held on 7.7.1987 at 6 p.m., which was covered by a news item appearing in the Indian Express in its issue dated 10.7.1987. It was datelined Ambala, July 9, inter alia the council demanded action against the Senior Post Master Ambala, which allegedly engineered an assault on a postman in league with other official of the Post Office.

12. The above material goes to show that here is a case which is not confined to mere allegations. Each one of the allegations was followed by documentation and therefore these allegations have to be placed on a higher footing compared to mere allegations as such. It has also to be remembered that all these allegations were made when the present case had not been registered.

13. Coming to the allegations made in the FIR which is sought to be quashed, the material particulars are conspicuous by their absence. The man who produces the bag is none other than a humble employee of the Central Telegraph Office. He inturn does not own the responsibility of the bag lying at a particular place. Some unknown person having found handed over the bag to him in order to be delivered to the Senior Post Master. The petitioner having proceeded on leave on 10.7.1987, it does not appear possible that he was entrusted with the distribution of postal articles that day and threw away the bag somewhere. In fact the petitioner was on leave from 10th to 30th July, 1987 on medical ground and it has not been shown that the petitioner was proceeded against departmentally for his absence without leave during these days.

14. Their lordship of the Supreme Court in *Bamachandra Narasimha Kulkarni v. State of Mysore*, 1964(2) CrL.J. 609 examined section 53 of the Post Office Act, 1898, and held that the word "wilful" was used by the legislature to mean only such detention which was deliberate and for some purpose. Where the detention was not deliberate and on purpose, but as a result of either inadvertence or carelessness or negligence, the accused cannot be said to have detained or delayed the article wilfully. In the fact of the present case this ingredient is totally missing from the averments made in the report of the police.

15. After careful consideration and for the reasons mentioned above I find that the present FIR has been initiated for ulterior reasons and it amounts to an abuse of the process of the Court. The FIR in question is, therefore, quashed. The petitioner will be entitled to costs of this petition. Counsel fee Rs. 500/.